



**Starzone Office Supplies Limited v Credit Bank Limited & another (Civil Suit E298 of 2020)
[2022] KEHC 14212 (KLR) (Commercial and Tax) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E298 OF 2020
A MABEYA, J
OCTOBER 21, 2022**

BETWEEN

STARZONE OFFICE SUPPLIES LIMITED PLAINTIFF

AND

CREDIT BANK LIMITED 1ST DEFENDANT

KENYA POWER AND LIGHTING COMPANY LIMITED 2ND DEFENDANT

RULING

1. This is a ruling on an application by the second defendant dated July 21, 2021. It was brought under order 10 rule 3, order 11 rule 3, order 1 rule 14, order 2 rule 15 and order 51 rule 1 of the [Civil Procedure Rules](#).
2. The application sought that the amended plaint dated March 10, 2021 be struck out and expunged from the court records and the name of the 2nd defendant be struck out from these proceedings.
3. The grounds of the application were on the face of it and on the supporting affidavit sworn by Jude Ochieng on July 21, 2021. These were that the 2nd defendant was a stranger to the suit and the counter-claim filed by the 1st defendant did not disclose any cause of action against it. That the plaintiff failed to seek leave of the court to enjoin the 2nd defendant as a party to the suit.
4. That the plaintiff was yet to comply with the orders of this court given on May 6, 2021 and July 22, 2021 directing it to serve the 2nd defendant with the summons, pleadings and requisite documents to enable the latter file its defence. That the plaintiff had failed to disclose any cause of action as against the 2nd defendant and its non-compliance was an abuse of the court process.
5. The plaintiff opposed the application *vide* the replying affidavit dated October 3, 2021. It was contended that striking out the applicant from the suit would be prejudicial to the constitutional rights



- of the plaintiff. That the 2nd defendant was a significant party to the suit as it was part of a tripartite agreement between the parties herein, wherein goods were supplied to it by the plaintiff, and the 1st defendant financed the transaction and was directly paid for by the 2nd defendant.
6. That the plaintiff sought for leave *vide* its application to amend the plaint which was allowed on March 10, 2021. That the applicant was served with all the necessary pleadings and an affidavit of service dated April 15, 2021 was filed. The same was annexed as KN2. That the 2nd defendant was again served on July 28, 2021 and August 11, 2021, respectively. The copies of the said list of documents with the 2nd defendant's receipt stamp was produced as KN3. That the amended plaint revealed a cause of action against the 2nd defendant.
 7. The court has considered the pleadings and evidence before it. The main issue for determination is whether the 2nd defendant applicant has laid out a case for striking out of its name as a party to the suit.
 8. Its case is that the plaintiff's case does not disclose any cause of action against it *vide* the amended plaint dated March 10, 2021. However, a quick perusal of the amended plaint reveals that the plaintiff has a claim against the applicant for special damages for alleged breach of contract in form of delayed payments for furniture supplied to it by the plaintiff and for irregular cancellation of the contract.
 9. The same was evident in the body of the amended plaint and on clause (i) of the orders prayed for. Clearly the amended plaint discloses a cause of action against the 2nd defendant. The 2nd defendant is therefore a significant party and needs to defend the claim.
 10. The 2nd defendant also claimed that the plaintiff joined it in the suit without leave of court. The record shows that this court did grant leave to the plaintiff to file the amended plaint. The court had clearly seen the addition of the 2nd defendant as a party before granting the leave sought. By granting leave sought, the court granted leave for all the amendments therein, inclusive addition of the 2nd defendant as a party to the suit.
 11. The 2nd defendant also contended that the plaintiff had failed to serve its pleadings upon it. However, there is an affidavit of service dated April 15, 2021 to the effect that the 2nd defendant was duly served. The plaintiff also produced evidence being copies of its list of documents stamped by the 2nd defendant. There is overwhelming evidence on record to show that the 2nd defendant was indeed served by the plaintiff.
 12. In any event, the affidavits of service on record were not challenged by calling the makers for cross-examination. They are taken to be the truth.
 13. In the end, the court finds the application as lacking in merit and hereby dismisses the same with costs to the plaintiff.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

A MABEYA, FCIarb

JUDGE

