



REPUBLIC OF KENYA



KENYA LAW

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Ahmednasir, Abdikadir & Company Advocates v Mahadi Oil(K) Limited & another (Civil Case E609 of 2021) [2022] KEHC 16068 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 16068 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E609 OF 2021
WA OKWANY, J
NOVEMBER 24, 2022

BETWEEN

AHMEDNASIR, ABDIKADIR & COMPANY ADVOCATES PLAINTIFF

AND

MAHADI OIL(K) LIMITED 1ST DEFENDANT

IBRAHIM HUSSEAIN MAHADI 2ND DEFENDANT

RULING

1. The plaintiff herein, Ahmednasir Abdikadir and Company Advocates, sued the defendants through the plaint dated June 3, 2021 in which it seeks the following orders:-
 - a. A declaration that the plaintiff is entitled to fees computed as per the fee agreements dated January 15, 2018.
 - b. The defendant be ordered to pay the plaintiff the sum of Kshs 840,000,000.00 being 25% of Kshs 3,360,000,000.00.
 - c. Interest on (b) above from November 21, 2019 at commercial rates or at such other rate at the court may deem just and fit.
 - d. Costs of this suit.
2. A summary of the plaintiff's case is that it provided legal services to the defendants for which a legal fee agreement dated January 15, 2018 was made for the payment of advocates' fees of an equivalent of 25% of the claim. It is the plaintiff's case that based on the said agreement, it proceeded to file the defendants' suit in court but that on or about November 19, 2019, it received communication from the law firm of Professor Albert Mumma & Company Advocates that the said Law Firm had been instructed to



takeover the conduct of the defendants' case. The plaintiff responded by requesting for the settlement of the agreed legal fees which the defendants did not pay thus precipitating the filing of the suit.

3. The defendants filed a defence and counterclaim to the suit. The defendants also filed the application dated July 2, 2021 which is the subject of this ruling.

The Application

4. The defendants seeks orders to strike out the plaintiffs suit, with costs, through the application dated July 2, 2021.
5. The application is supported by the 2nd defendants affidavit and is premised on the grounds that:-
 1. The plaintiff suit as drawn and filed herein is fatally defective for want of compliance with section 48 of the *Advocates Act*.
 2. The plaintiff is not an advocate capable of filing and/or sustaining a suit for recovery of alleged legal fees under *Advocates Act* chapter 16 Laws of Kenya and the *Advocates (Remuneration) Order*.
 3. The plaintiff is non suited and lacks the legal capacity to contract, sue, be sued and or/institute and sustain a competent suit before this honourable court in its name.
 4. The defendants are strangers to the plaintiff as a party and have never contracted with the plaintiff as alleged and/or at all.
 5. The suit as filed is not accompanied with a competent verifying affidavit as mandatorily required in law.
 6. The plaintiff's suit as filed is unfounded and contrary to the provisions of section 45, 46, 48 and 51 of the *Advocates Act* chapter 16 laws of Kenya.
 7. The suit as filed lacks legal foundation and is filed in contravention of the *Advocates Act* and the rules made thereunder, the same is merely designed to cause the defendants unnecessary anxiety and expense.
 8. In the above circumstances the plaintiff's suit as filed herein is not only scandalous, frivolous and vexatious but also an abuse of the court process.
 9. It is in the interest of justice that the suit herein be struck out with costs to the defendants.
6. The plaintiff opposed the application through the replying affidavit of Ms Asli Osman Advocate who states that the application is frivolous, haphazard, inelegant and legally unsophisticated.
7. Parties canvassed the application by way of written submissions which I have considered.
8. This court has been called upon to strike out the plaintiff's suit on the main ground that it has been filed by a party/plaintiff who is not capable of filing and sustaining a suit for the recovery of the alleged legal fees. According to the defendants/applicants, the plaintiffs are non-suited and lack the legal capacity to contract, sue or be sued before this court.
9. It was also the applicant's case that the suit is not accompanied by a competent verifying affidavit and contravenes sections 45, 46, 48 and 52 of the *Advocates Act*.



10. In a rejoinder, the plaintiff maintained that the suit is properly before the court having been filed by a duly registered partnership law firm regulated under the [Partnership Act](#) with the legal capacity to sue and maintain a suit.
11. Section 7(2) of the [Partnership Act](#) stipulates as follows:-
 7. The carrying on of partnership business
 - (2). A partnership shall be capable of-
 - a. Suing and being sued in its own name;
 - b. Entering into contracts and owning or holding property for the purposes of the business of the partnership; and
 - c. Subject to the partnership agreement, providing continuity for the partnership business despite a change in the partners.
12. Order 30 rule 1 of the [Civil Procedure Rules](#) provides that:-

“Suing of partners in name of firm(Order 30 rule 1)

“Any two or more persons claiming or being liable as partners and carrying on business in Kenya may sue or be sued in the name of the firm(if any) in which such persons were partners at the time the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the person who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct.”
13. In the instant case, it is not disputed that the plaintiff is a partnership law firm that is capable of suing and being sued in its own names.
14. The defendants took issue with the fact that a comma(,) is missing from the plaintiffs names between Ahmednassir and Abdikadir.
15. My finding is that the issue of a missing comma is one that is curable through an amendment and does not change the facts of the case which is that the parties allegedly entered into a legal fees agreement.
16. On the issue of whether the plaint was accompanied by a competent verifying affidavit, I note that the verifying affidavit was sworn by Asli Osman who described herself as a managing partner in the plaintiff law firm.
17. No material was placed before this court to show that the deponent of the verifying affidavit is not a partner in the said law firm. I find that the verifying affidavit meets the requirements of a verifying affidavit.
18. On whether the legal fees agreement is invalid, I find that this is an issue that can best be determined at the hearing of the main suit and not in this interlocutory application.
19. Courts have taken the position that striking out of pleading, is a drastic step that should be approached with caution and that courts should lean towards sustaining a suit unless the case appears hopeless.
(See [DT Dobie & Company\(K\) Ltd vs Joseph Mbaria Muchina & Another](#) (1980) eKLR.
20. In the present case, I am not persuaded that the plaintiff's suit can be described as totally hopeless or that it does not disclose a reasonable cause of action.



21. For the above reasons, I find that the application dated July 2, 2021 is not merited and I therefore dismiss it with costs to the plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF NOVEMBER 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Ms Khadiya for Muchoki for plaintiff.

Mr. Kimathi for Agwara for defendant

Court Assistant- Sylvia

