



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO 440 OF 2011**

**FORMERLY NAKURU HCCC NO 299 OF 2009**

**FORMERLY NAKURU HCCC 1227 OF 1996**

**FORMERLY NAKURU HCCC 125 /93 AND NAKURU 132/93**

**EDWARD KINGS ONYANCHA MAINA T/A MATRA**

**INTERNATIONAL ASSOCIATES.....PLAINTIFF**

**VERSUS**

**CHINA JIANGSU CORPORATION.....1<sup>ST</sup> DEFENDANT**

**JAMES OCHIENG ODUOL.....2<sup>ND</sup> DEFENDANT**

**RPV WENDOH.....3<sup>RD</sup> DEFENDANT**

**JOSEPH NYAMU.....4<sup>TH</sup> DEFENDANT**

**MARY G. MUGO.....5<sup>TH</sup> DEFENDANT**

**K.H. RAWAL.....6<sup>TH</sup> DEFENDANT**

**JOHN PHILIP RANSLEY.....7<sup>TH</sup> DEFENDANT**

**HON. CHIEF JUSTICE.....8<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....9<sup>TH</sup> DEFENDANT**

**RULING (3)**

1. In their Chamber Summons application dated 2<sup>nd</sup> October 2010, the 3<sup>rd</sup> to 6<sup>th</sup> Defendants sought that the Plaintiff's suit against them be struck out. The said application was supported by the Affidavit of Emmanuel Bitta that was also sworn on 2<sup>nd</sup> October 2010. He sought costs to be paid on the higher scale.

2. In opposition to the said application, on 26<sup>th</sup> September 2016, the Plaintiff filed Grounds of Opposition of even date. His grounds of opposition were as follows:-

**1. THAT the application was an abuse of the court process, bad in law, dishonesty (sic), frivolous, oppressive, treacherous, scandalous, vexatious and lacked legal authority per se.**

**2. THAT the application was calculated at entrenching, perpetrating, sanitizing and sustaining the abuse committed by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants.**

3. THAT the application sought to repeal and/or whitewash the fact that the 4<sup>th</sup> and 5<sup>th</sup> Defendants were removed from office for corruption during the 2003 vetting of Judges and Magistrates.

4. THAT the application seeks to sanitise and enforce the failure of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants to arrest and punish the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who had disobeyed court orders.

3. The 3<sup>rd</sup> to 7<sup>th</sup> Defendants submitted that they were judicial officers who adjudicated and delivered Rulings in respect of this matter and exercised their judicial authority in good faith and independently of each other and without collusion. They submitted that the Plaintiff was merely full of vengeance because he ought to have challenged their orders through reviews or appeals. It was their contention that the Plaintiff had not disclosed a reasonable cause of action.

4. On his part, the Plaintiff argued that the 3<sup>rd</sup> to 7<sup>th</sup> Defendants abused the court process and demeaned the authority, image and integrity of the court by creating historical injustices and inequities by protecting the 2<sup>nd</sup> Defendant to disregard several orders that were given by different courts in Nairobi and Nakuru.

5. Order 2 Rule 15 (1) of Civil Procedure Rules, 2010 provides as follows:-

1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court,

and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under sub rule (1)(a) but the application shall state concisely the grounds on which it is made.

(3) So far as applicable this rule shall apply to an originating summons and a petition.

6. The court must at all times be cognisant of the fact that judicial time is precious and must not be wasted in engaging itself in academic exercises by hearing cases in a full trial where it was plain and obvious that a plaintiff disclosed no reasonable cause of action or defence in law, where a plaintiff was scandalous, frivolous, vexatious, where a plaintiff may prejudice, embarrass or delay the full trial of the action or where the plaintiff was otherwise an abuse of the court process.

7. In the case of Grace N Karianjahi vs Dr Simon Kanyi Mbuti [2002] eKLR, it was also held as follows:-

**“The Plaintiff can also be frivolous, if it has no substance, it is fanciful or that the party is simply trifling with the Court or wasting the Courts time. The Pleading is also vexatious if it has no foundation in law, it is filed for the mere purpose of annoying the other party; it is leading to no possible good and has no chance at all of succeeding. On the other hand, pleadings are otherwise an abuse of the court process when they are filed in court simply to waste its time or when they are worthless or to delay the due process of the law”.**

8. In the same breathe, a court must exercise restraint and proceed very cautiously when it has been asked by a party to strike out pleadings before a matter has proceeded for full trial. Indeed, striking out pleadings before hearing of a matter is a draconian step and must be used sparingly and in the clearest of the cases as was held in the case of D.T. Dobie Co Ltd vs Muchina [1982] KLR D.T. Dobie and in the case of Geminia Insurance Co Limited vs Kennedy Otieno Onyango [2005] eKLR where Musinga J (as he then was) held as follows:-

**“It is trite law that striking out pleadings is a draconian step which ought to be employed in the clearest of cases and particularly where it is evident that the suit is beyond redemption.”**

9. In the case of Elijah Sikona & Another vs Mara Conservancy & 5 Others [2013] eKLR, it was further held as follows:-

**“There are well established principles which guide the court in exercise of its discretion under these rules. Striking out is a jurisdiction which must be exercised sparingly and in clear and obvious cases. Unless the matter is plain and obvious, a party to civil litigation is not to be deprived of his right to have his suit determined in a full trial. The court ought to act cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court”.**

10. In addition, in the case of Wedlock vs Moloney [1965] 1 WLR 1238, it was held that:-

**“...Summary jurisdiction of court was never intended to be exercised by a minute and protracted examination of documents and the facts of the case in order to see if the Plaintiff really has a cause of action...”**

11. As could be seen from the aforesaid cases, the common thread was that courts must be very cautious to deny parties an opportunity to ventilate their cases no matter how weak their opponents felt their cases were. However, they were also called upon to be vigilant not to allow cases that fell within the provisions of Order 2 Rule 15 (1) of the Civil Procedure Rules, 2010 to clog the already congested court diaries.

12. Having carefully considered the parties submissions in this case, this court found itself in agreement that they were exercising their mandate as judicial officers. This was a position that was also supported by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who submitted that the very joinder of the 3<sup>rd</sup> to 9<sup>th</sup> Defendants herein was unnecessary and tantamount to prosecuting a judicial officer performing his function under the law, which is expressly prohibited by the law.

13. Section 6 of the Judicature Act Cap 8 (Laws of Kenya) stipulates that:-

**“No judge or magistrate, and no other person acting judicially, shall be liable to be sued in a civil court for an act done or ordered by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided he, at the time, in good faith believed himself to have jurisdiction to do or order the act complained of; and no officer of a court or other person bound to execute the lawful warrants, orders or other process of a judge or such person shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the person issuing it.”**

14. Further, Article 160(5) of the Constitution of Kenya, 2010 states that:-

**“A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.”**

15. The Plaintiff may have been aggrieved by the decisions of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants. However, the remedy that was open to him was to seek review and/or appeal against the orders he felt created historical injustice and inequities against him and not to institute proceedings against them in the manner that he did.

16. As there was no reasonable cause of action that was disclosed against the 3<sup>rd</sup> to 7<sup>th</sup> Defendants, it only led to the Plaintiff's suit against them being struck out.

#### **DISPOSITION**

17. For the foregoing reasons, the upshot of this decision was that the 3<sup>rd</sup> to 9<sup>th</sup> Defendants' Chamber Summons application dated 2<sup>nd</sup> October 2010 was merited and the same is hereby allowed. However, bearing in mind that the 3<sup>rd</sup> to 9<sup>th</sup> Defendants are State Officers being represented by the 9<sup>th</sup> Defendant herein, there will be no order as to costs in their favour against the Plaintiff herein.

18. However, to avoid numerous applications being filed against them in respect of the same complaints that have been raised herein, it is hereby directed that the Plaintiff shall not file any application against them without leave of the court.

19. It is so ordered.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> day of July 2020**

**J. KAMAU**

**JUDGE**