



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO 9 OF 2018**

**1. TRISQUARE LTD**

**2. PROF. SAMUEL KURIA MBUGUA ..... PLAINTIFFS**

**VERSUS**

**1. CHRISTIAN LAU LARSEN**

**2. SUSAN CLARE LARSEN ..... DEFENDANTS**

**R U L I N G**

1. On the 21/3/18 the two Plaintiffs herein, **Trisquare Ltd** (hereinafter Trisquare) and **Prof. Samuel Kuria Mbugua** (hereinafter Prof. Mbugua) filed a suit against the Defendants, **Christian Lau Larsen** and **Susan Clare Larsen** seeking several reliefs, including an order that the Defendants be compelled to pay a sum of KShs.1,324,664,700.00 to the Plaintiffs by way of compensation in respect of incurred costs and forfeited incomes, and the immediate release and surrender of two title deeds in the name of the Trisquare Ltd. i.e. **LR 209/10293 Nairobi** and **LR 12850 Kikuyu**, to Trisquare and Prof. Mbugua.

2. Filed contemporaneously with the plaint was a Notice of Motion brought under certificate of urgency containing two substantive prayers. The 2<sup>nd</sup> prayer in the motion seeks a temporary injunction against the Defendants and their agents and servants to **“stop forthwith any claim of ownership, or directorship of shareholder in First Plaintiff Company, interference or unauthorized actions and associations with the First Plaintiff’s business, operations, activities and its respective bank account at I & M Bank – Karen Branch.”** (sic)

3. The third prayer seeks that:

**“An order do issue directing, till the inter parte hearing of this application or/and till the hearing and determination of this suit or generally until a further order, the Defendants by themselves, their servants, agents or otherwise to immediately release and surrender the two assets of First Plaintiff being two (2) title deeds namely LR 209/10293 and LR 12850, Kikuyu unlawfully under their custody and registered under the names of the First Plaintiff as pleaded herein for its business, operations and activities.”** (sic)

The Motion was supported by an affidavit sworn by Prof. Mbugua.

4. On 25<sup>th</sup> April 2018, the Defendants filed a defence statement denying the Plaintiffs’ claim. They averred *inter alia* that the suit ought to be struck out *in limine* as it is based on illegal and fraudulent conduct on the part of the 2<sup>nd</sup> Plaintiff. This averment is repeated in the grounds filed on 8<sup>th</sup> May 2018 in opposition to the Plaintiffs’ motion . On. 25<sup>th</sup> April the Defendants also filed a Notice of Motion seeking that the suit be struck out on grounds that the 2<sup>nd</sup> Plaintiff filed it on behalf of the 1<sup>st</sup> Plaintiff on the basis that he was the sole shareholder and director of the first Plaintiff, whereas the said Second Plaintiff had illegally and unlawfully appointed himself the sole director of the 1<sup>st</sup> Plaintiff.

5. The alleged illegal actions are stated in the motion. The said actions include the alleged:-

a) lodgment by the 2<sup>nd</sup> Plaintiff of a Form CR9 with the Companies Registrar on 10<sup>th</sup> October 2017 purporting that Charles Julian Burton Larby (Larby) and Christian Lau Larsen (Christian) had resigned as directors of the first Plaintiff.

b) lodgment by the 2<sup>nd</sup> Plaintiff’s of an attachment to the Form CR 9 a letter of a false letter of resignation dated 10<sup>th</sup> October 2017 and an affidavit sworn by Larby both purporting that the said Larby had resigned as a director of the 1st Plaintiff on the said date. Yet Larby had died on 23rd June 2017 and could not have signed the said documents.

c) the 2<sup>nd</sup> Plaintiff's lodgement of an attachment to the Form CR 9 of a false letter of resignation and affidavit sworn by Christian both purporting that Christian had resigned as director of the 1<sup>st</sup> Plaintiff on 10<sup>th</sup> October, 2017.

d) lodgment by the 2<sup>nd</sup> Plaintiff on 10<sup>th</sup> October 2017, of a Form CR I9 with the Companies Registrar declaring that the directors of the first Plaintiff had passed a resolution to operate with a sole director, namely Prof. Mbugua.

e) lodgment by the second Plaintiff of fraudulent documents with the Companies Registrar thereby misleading a public officer in the execution of his duties,

f) It is further stated that the said actions represent offences under Sections 108, 345, 353 and 357 of the Penal Code, and Section 872 of the Companies Act. That a court of law ought not to assist a party involved in illegal transactions and the suit and any further proceeding amount to an abuse of the court process.

6. The Motion is supported by the affidavits of Christian and Susan Clare Larsen . Christian depones that he was concerned upon noting the averments in the plaint to the effect that the Prof. Mbugua is the founder and Managing Director of Trisquare, and the document of search contained in the Plaintiffs bundle of documents (page 360), the latter purporting that Prof. Mbugua was the sole shareholder/director of Trisquare. That he instructed his advocates to obtain further information from the Registrar of Companies. He has exhibited the seven documents identified in the grounds supporting the motion and annexed these as annexure **CLL2**, and the death certificate in respect of Larby (**CLL3**). He therefore denies that Larby could have resigned as a director of Trisquare on the 10<sup>th</sup> October, 2017 having died in June 2017.

7. He also denies having resigned as a directions of Triquare, and cites his involvement in litigation with Prof. Mbugua in Kiambu High Court Civil Appeal No. 124/2017 in the material period. He dismisses the letters and affidavits of purported resignations as forgeries, and Prof. Mbugua's involvement in the said transactions as criminal activity prohibited by specific provisions of the Penal Code and the Companies Act. That the reliance by Prof. Mbugua upon these documents amounts to perpetuating illegalities and an abuse of the court process.

8. The second supporting affidavit sworn by the Susan (2<sup>nd</sup> Defendant) points to the Memorandum of Association on page. 14 of Plaintiff's Bundle of Documents showing that the two subscribers to the first Plaintiff were Prof. Mbugua and the deceased Larby, each holding one share. That the late Larby held the said share in trust for Susan per the letter to the Commissioner of Lands dated 28<sup>th</sup> February 1992 ( annexure **SCL 1**). That Larby had subsequently transferred the share to her vide transfer document annexed as **SCL 2** and whose effectuation at the Companies Registry was frustrated by the dispute between Prof. Mbugua and the Defendants. She confirms that Larby died on 23rd June 2017.

9. In his replying affidavit sworn on 22<sup>nd</sup> May 2018 Prof. Mbugua reiterates his position as founder, shareholder and Managing Director of Trisquare. He asserts that the Defendant/Applicants have no *locus standi* in respect of the affairs of Trisquare, not being directions or shareholders and not having tendered any evidence to the contrary.

10. That the subject motion is frivolous, and an abuse of the court process , while the supporting affidavits raise non- issues calculated to circumvent the substantive issues pleaded in the suit, to which no solid defence has been raised. He depones that the motion has no merit and moreover no prejudice has been alleged by the Defendant/Applicants. He also raises argumentative matters in favour of the resolution of the substantive dispute as opposed to the striking out of a suit. The court directed that the Plaintiffs' motion be heard upon determination of the Defendants' motion.

11. During the hearing of the motion Mr. Gachuhi pointed the court to the averments in the plaint and the Plaintiffs bundle of documents. In particular, the averments at paragraph 2 of the plaint to the effect that the 2<sup>nd</sup> Plaintiff was the founder and the sole shareholder of the 1<sup>st</sup> Plaintiff, and contrasting the averment with the memorandum and articles of association showing that there were 2 subscribers at incorporation: Charles Julian Burton Larby (1 share) and Samuel Kuria Mbugua (1 share). He contended that the position has not changed, as suggested by the averments in the plaint and by the letter dated 22<sup>nd</sup> December 2017 from the Registrar of Companies (at pag.360 of the Plaintiff's Bundle).

12. Mr. Gachuhi took the court through the contents of other documents under annexure **CLL 2** to the affidavit of Christian as follows:

a) Form CR 9 dated 10<sup>th</sup> October 2017, on the face of it lodged by Samuel Kuria Mbugua to the effect that Charles Christian Lau Larsen had resigned as director of Trisquare Ltd. on 10<sup>th</sup> October, 2017

b) Form CR I9 being a notice of special resolution lodged by Samuel Kuria Mbugua dated 10<sup>th</sup> October, 2017 to the effect that at a meeting convened on 10<sup>th</sup> October 2017 a resolution was passed that Charles Julian Barton Larby voluntarily resigned from the position of director/shareholder transferring his 1 share to Samuel Kuria Mbugua, that Christian Lau Larsen also resigned from the position of a non-shareholder director, and that the Trisquare had resolved to operate with one director/shareholder, namely, Samuel Kuria Mbugua holding 2 shares.

c) Two letters of resignation addressed to the Registrar of Companies and related affidavits dated 10<sup>th</sup> October, 2017 purporting to be authored/sworn by Larby and Christian respectively, to the effect that the two had tendered their resignation from Trisquare Ltd. And further had relinquished all their interest therein.

13. Mr. Gachuhi further referred to annexure **CLL3** which is a death certificate No. 502807 indicating that Charles Julian Larby died on 23<sup>rd</sup> June, 2017. Stating that the documents lodged with the Companies Registrar are forgeries, Mr. Gachuhi asserted that they constitute illegalities, and have not been controverted. He referred to Section 108 of the Penal Code which proscribes perjury in legal proceedings and the provisions of Section 872 of the Companies Act which creates an offence relating to lodgment of false and misleading documents or statements with the Registrar of Companies.

14. He argued that the principle in the maxim *ex turpi causa non oritur actio* does apply to the facts of this case and that once an illegality is brought to the notice of the court, it must not allow a cause brought in furtherance of such illegality to be sustained. He relied, for this proposition, on the decisions of the Court of Appeal in **Heptulla v Noor Mohamed [1984] eKLR; Kenya Pipeline Company Ltd. v Glencore Energy of (U. K) Ltd. [2015] eKLR**. Also relied on were decisions of the High Court in **Edward Odembo Ajulu & Another v Wanga Omangi [2005] e KLR**, **Lucy Mwendwa Muuru v Tony Githuku [2009] e KLR** and **Sammy Japheth Kariuki v Equity Bank Ltd & Another [2014] e KLR**.

15. For his part, Mr. Kamau for the Respondents asserted that the Applicant/Defendants had not demonstrated the alleged abuse of the court process and that there are substantive issues in dispute between the parties, including, the Defendant's alleged tampering with records of the Trisquare and the fact that the Defendants have no legitimate positions in the company, and are impostors. He took the view that the raising of the maximum of *ex turpi causa* in this case was a means to circumvent the real issues in the suit.

16. He submitted further that the Defendant/Applicants' affidavits did not demonstrate the Defendants' standing as directors in Trisquare. He placed reliance on the decisions in **Trust Bank Ltd v Amin & Co. Ltd & Another [2000] KLR 164** and **D. T. Dobie & Co. (K) Ltd v Joseph Mbaria Muchina & Another [1980] eKLR** *inter alia*, and asserted that allegations that are yet to be established by evidence cannot be a basis for the striking out of a suit, more so if it raises triable issues.

17. In a brief rejoinder Mr. Gachuhi reiterated the position that there was no effort by the Plaintiff/Respondents to controvert the contents of the affidavits and documents in support of the Defendants/Applicants' motion, particularly, of the fact that the 1<sup>st</sup> Applicant was a director of Trisquare, while the 2<sup>nd</sup> Applicant owned 1 share in Trisquare which was previously held in trust for her by the deceased Charles Julian Burton Larby. Mr Gachuhi distinguished the authorities cited by the Plaintiff/Respondents on the basis that none of them deal with the issue of illegalities such as forgeries, as in this case.

18. The Court has considered the material canvassed in respect of the Defendants' Motion. The Applicants invoked Section 3A of the Civil Procedure Act and Order 2 Rule 15(1) d of the Civil Procedure Rules *inter alia*, their chief complaint being that Prof. Mbugua has through illegal actions appointed himself as a sole director/shareholder of the 1st Plaintiff, and has, on that basis filed the present suit on behalf of the 1<sup>st</sup> Plaintiff/Respondent, Trisquare. Thus, in my view, the court is being asked to determine whether the present suit appears to arise *ex turpi causa*.

19. In **Heptulla v Noor Mohamed** where the Respondent relied on the long illegal occupation and use of a premise in his defence against the Appellant/landlord, the Court of Appeal stated that:

**“The participation by the Appellant in the illegal user of the store ... does not legalise the user ... The Respondent alone has to bear the illegality particularly as he brought it up.”**

20. The court proceeded to quote a passage in the judgment of Lord Morris of Borth-y-Gest as cited in **Mistry Singh v Kulubya [1963] EA 408 at 414** to the effect that:

**“Ex turpi causa non oritur octio. This old well know legal maxim is founded in good sense and expresses clear and well – recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the Defendant has pleaded the illegality or whether he has not. If the evidence adduced by the Plaintiff proves the illegality, the court ought not to assist him.”**

21. In the descriptive paragraphs of the plaint filed on 21<sup>st</sup> March 2018 the 1<sup>st</sup> Plaintiff is stated to be a limited liability company incorporated under the Companies Act. In paragraph 2, the 2<sup>nd</sup> Plaintiff is described *inter alia* as **“the founder, the Managing Director and the shareholder of the First Plaintiff.”** At paragraph 3, the first Defendant is described as **“an adult male of Danish Nationality and trader in imported second hand food equipment and ingredients”**. The Second Defendant is described at paragraph 4 as a wife and business partner of the first Defendant.

22. The first prayer in the plaint is for:

**“a) An order that the Defendants by themselves, their servants, agents or otherwise to stop forthwith any claim of ownership, or directorship or shareholders in first Plaintiff Company, interference or unauthorized actions and associations with First Plaintiff's businesses, operations, activities and its respective bank account at I&M Bank - Karen Branch.” (sic)**

23. Prayer (c) seeks an order against the Defendants for the immediate release and surrender of title deeds in respect of two stated land parcels said to be registered in the name of the first Plaintiff.

24. In the verifying affidavit sworn by Prof. Mbugua on 21<sup>st</sup> March, 2018, it is deponed at paragraph 2 that:

**“That I am also the Managing Director of the First Plaintiff company dealing in food manufacturing businesses operated by myself since 1985 under a sole proprietorship business trading as Trisquare Products ... before its conversion/in corporation as Trisquare Limited Company in the year 1989... hence duly authorized and competent to swear this affidavit on its behalf.”**

25. Of the numerous documents contained in the Plaintiffs' Bundle of Documents filed with the plaint is a letter dated 22<sup>nd</sup> December 2017 emanating from Registrar of Companies [page 360], and addressed to the directors of Trisquare Ltd indicating that the 2<sup>nd</sup> Plaintiff Samuel Kuria Mbugua was the sole director and shareholder (with 2 shares) in Trisquare Ltd. This letter refers to the request contained in a letter dated 10<sup>th</sup> October, 2017. The Defendant/Applicants have exhibited the said request as annexure **CLL2** to the affidavit sworn by the 1<sup>st</sup> Defendant on 24<sup>th</sup> April 2018. The letter is authored by Prof. Mbugua on the face of it.

26. Exhibited alongside this request are copies of documents obtained by the Defendants from the Registrar of Companies giving Notice of the purported resignation of the 1<sup>st</sup> Defendant and Charles Julian Burton Larby as directors of Trisquare [FORM CR 9 dated 10<sup>th</sup> October, 2017, lodged by one Samuel Kuria Mbugua); Notice of special resolution in respect of the voluntary resignation of Charles Julian Burton Larby as a director/shareholder and transfer of his 1 share to Samuel Kuria Mbugua and resignation of the 1<sup>st</sup> Defendant from the position of a non-shareholder director, and of the fact that Samuel Kuria Mbugua remained the sole director and shareholder with 2 ordinary shares [FORM CR 19 dated 10<sup>th</sup> October, 2017 lodged by one Samuel Kuria Mbugua); two affidavits purportedly sworn by Charles Julian Burton Larby and Christian Lau Larsen on 10<sup>th</sup> October, 2017 and their two purported resignation letters respectively, addressed to the Registrar of Companies, dated 10<sup>th</sup> October 2017.

27. The 1<sup>st</sup> Defendant denies that he ever resigned from Trisquare Ltd. in his affidavit supporting the Motion. Moreover he depones that Charles Julian Larby died on 23<sup>th</sup> June 2017. A copy of the death certificate is attached as annexure **CLL3**. He dismisses the affidavits and purported resignation letters as forgeries and asserts that there has never been any resolution by the directors of Trisquare to change the directorship and shareholding thereof.

28. For her part, the 2<sup>nd</sup> Defendant points to the Memorandum of Association in the Plaintiff's Bundle of Document (at pg. 14) showing the shareholding of one share each by the 2<sup>nd</sup> Plaintiff and Charles Julian Burton Larby as subscribers to Trisquare Ltd., and asserts that the said 1 share held by Larby was held in trust for her. She has annexed a letter dated 28<sup>th</sup> February 1992 to that effect and a non-effected Transfer Form completed by Larby in her favor, as annexures **SCL 2** and **SCL 1** respectively.

29. To these matters, the most substantive response contained in the Replying affidavit of the 2<sup>nd</sup> Plaintiff is firstly, that the Defendants have no *“locus standi over affairs of the First Plaintiff”* not being directors or shareholders therein, secondly that the Applicants' affidavits raise **“non – issues and are calculated to.... circumvent the substantive issues”** in the suit.

30. Not a single deposition addresses itself to the serious and well documented accusations made against the 2<sup>nd</sup> Plaintiff by the Defendants through their affidavits and annexures. In submissions before the court however, counsel for the Plaintiffs submitted somewhat obliquely that the Defendants had interfered with records of the 1<sup>st</sup> Plaintiff and that Charles Julian Burton Larby is not a party to this suit.

31. Apart from stating that the Defendants were not directors of the first Plaintiff, the 2<sup>nd</sup> Plaintiff did not deem it necessary to explain how he ended up occupying the position of the sole shareholder/director of the 1<sup>st</sup> Plaintiff, notwithstanding the subscription documents in his Bundle of Documents. The court has taken time to look at some of the documents tendered in the Plaintiffs' Bundle of Documents including the Memorandum of Association (page 14), the directorship/shareholder status of the 1<sup>st</sup> Plaintiff as communicated by the letter by the Registrar of Companies (pg. 360); and letters authored by the 2<sup>nd</sup> Plaintiff on 17<sup>th</sup> October, 2014 (page 314) and 6<sup>th</sup> November 2014 (page 315) referring to the 1<sup>st</sup> Defendant as a director of Trisquare. Also contained in the bundle are numerous exchanges of correspondences between the 2<sup>nd</sup> Plaintiff and/or his advocates on one hand, and the 1<sup>st</sup> Defendant and/or his advocate on the other.

32. It is evident from these letters and others that there has been a long drawn dispute between the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant over the running of the 1<sup>st</sup> Plaintiff, the contributions of the respective directors to the growth of the business and over the company assets. From 2014 onwards the 2<sup>nd</sup> Plaintiff was disputing that the 1<sup>st</sup> Defendant was indeed a director of the 1<sup>st</sup> Plaintiff, and accusing the 1<sup>st</sup> Defendant of 'appointing' himself to the position and 'masquerading as a director' (pp. 316 – 319 of the Plaintiff Bundle of Documents).

33. That the 2<sup>nd</sup> Plaintiff, faced with the accusations contained in the affidavits of the Defendants opted to dismiss the issues raised as non-issues and to maintain a studious silence is baffling. The documents lodged with the Registrar of Companies notifying change in directorship and shareholding in Trisquare indicate on the face of it that they were lodged by the 2<sup>nd</sup> Plaintiff. Moreover he is the sole beneficiary of the purported resignations of co-directors and shareholders as the end result was that he remained the sole director and shareholder in Trisquare. Key assertions by the Applicants that the 1<sup>st</sup> Defendant had never resigned directorship of the 1<sup>st</sup> Plaintiff and that Charles Julian Burton Larby had been dead for 4 months by the date of his purported resignation have not been controverted.

34. Indeed it is evident that not only did the 2<sup>nd</sup> Plaintiff stand to benefit from the purported resignations by becoming the sole shareholder/director, but also, the new status gave him a platform upon which to bring this suit on behalf of the 1<sup>st</sup> Plaintiff. The key prayers in his suit are crafted in my view to give full effect to the purported altered status of 1<sup>st</sup> Plaintiff directorship/shareholding and to compel Defendants to hand over the two immovable assets of the 1<sup>st</sup> Plaintiff company into the control of the 2<sup>nd</sup> Plaintiff.

35. Reviewing all the material before it, the court has no doubt that the lodgments and notices to the Registrar of Companies on 10<sup>th</sup> October, 2017 were done by the 2<sup>nd</sup> Plaintiff as the notices themselves indicate, and that the notices were false and supported by patently forged letters of resignation, affidavits, and company resolutions. The 2<sup>nd</sup> Plaintiff's silence, in the face of such false and patently fraudulent transactions speaks volumes as to his involvement. The 2<sup>nd</sup> Plaintiff's repeated claim that his suit raises serious issues as opposed to the so-called non-issues raised in the motion cannot salvage a suit that is evidently based on illegalities. It appears that the key object behind this suit was to obtain the seal and imprimatur of this court to the false transactions and documents dated 10<sup>th</sup> October, 2017 and to afford the 2<sup>nd</sup> Plaintiff an opportunity to rout and supplant the Defendants while taking over the assets of the 1<sup>st</sup> Plaintiff.

36. The authorities cited by counsel for the Plaintiff relate to pleadings which disclosed no cause of action or triable issues. The facts of this case are quite distinguishable. What the 2<sup>nd</sup> Plaintiff appears to suggest in relying on the authorities is that, the court should sustain a suit which raises triable issues even where the same has apparently arisen *ex turpi causa*. There cannot be a worse form of abuse of the court process; that a court of law would knowingly lend itself to be used in furtherance of what is patently a fraudulent and illegal scheme set in motion by the claimant.

37. The decision of the Court of Appeal in the **Kenya Pipeline Company Ltd v Glencore Energy (UK) Ltd (2015) eKLR** turned *inter alia* on the issue of the apparent violation of the Energy Act by the Respondent. The Court of Appeal observed:

**“In STANDARD CHARTERED BANK Vs. INTERCOM SERVICES LTD & 4 OTHERS (supra), this Court, differently constituted, accepted the submissions made that once an issue of a breach of a statute is brought to the attention of the Court in the course of proceedings, then in the interest of justice the Court must investigate it because the court's fundamental role is to uphold the law. The court upheld and endorsed the old English case of HOLMAN Vs. JOHNSON (1775-1802) All ER 98 where Chief Justice Mansfield stated;**

**“The principle of public policy is this:**

***Ex dolo malo no ovitur actio* . No court will lend its aid to a man who found his cause of action on an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of this country, there the court says that he has no right to be assisted. It is on that ground the court goes, not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.”**

**We respectfully agree with that pronouncement of the law that still speaks unmistakably more than two centuries later. What the English courts could not do to assist a lawbreaker, Kenyan courts and courts anywhere, should not do.**

**There is a consistent line of decisions of this Court where it has set its face firmly and resolutely against those who would breach, violate or defeat the law then turn to the courts to seek their aid. The Court has refused to lend aid or succour and has refused to be an instrument of validation for such persons. We still refuse. See MISTRY AMAR SINGH Vs. KULUBYA [1963] EA 408, HEPTULA Vs. NOOR MOHAMMED [1984] KLR and FESTUS OGADA Vs. HANS MOLLIN (supra). In the last case the Court stated, and we are content to merely restate it as good law, that no court ought to enforce an illegal contract where the illegality is brought to its notice and if the person invoking the aid of the court is himself implicated in the illegality”.**

See also **Arthi Highway Developers Ltd. Vs Westend Butchery Ltd. &6 Others (2015) eKLR** where false changes in directorship were introduced at the Companies Registry in respect of Westend Butchery Ltd by unscrupulous parties for purposes of taking over the assets of the Respondents.

38. Similarly, in this case, there is uncontroverted evidence of the 2<sup>nd</sup> Plaintiff's apparent contravention of Section 872 of the Companies Act which proscribes the making of and lodgment of false or misleading documents and or statements with the Registrar of Companies. Forgery, which comprises the making of a false document is an offence under Section 347 of the Penal code.

39. This court cannot sustain a suit that appears to be rooted in and brought in furtherance of what is patently a criminal enterprise. In the circumstances, the entire suit herein is struck out with costs.

**DELIVERED, DATED AND SIGNED AT KIAMBU THIS 28<sup>TH</sup> DAY SEPTEMBER, 2018**

**In the Presence of :**

Mr. Gachuhi for the Defendants/Applicants

Mr. Kamau for the Plaintiffs

Court clerk - Kevin

**C. MEOLI**

**JUDGE**