



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 155 OF 2014**

**JASON BOORMAN .....PLAINTIFF**

**- VERSUS -**

**MICHAEL JOHN STANHOPE DUCKWORTH.....DEFENDANT**

**RULING**

1. The defendant, **MICHAEL JOHN STANHOPE DUCKWORTH**, has moved the court by way of a Notice of Motion dated 27<sup>th</sup> May 2014. He was asking the court to strike out the suit against him, and to award him the costs of the said suit.
2. It is the defendant's position that the plaintiff's suit discloses no reasonable cause of action against him. His reason for that contention was the money which the plaintiff is seeking to recover from him, was lent to a Third Party, **GEOGRID EAST AFRICA LIMITED**.
3. According to Ms Wangui Shaw, the Learned advocate for the defendant;  
*"Plaintiff advanced money to his step – father who is the majority shareholder in the company. The money was used in the company"*.
4. In effect, I understand the defendant to be saying that the beneficiary of the money was not him, but the company. Therefore, as shareholders and directors of a limited liability company were distinct from the company, the defendant reasoned that it was wrong for the plaintiff to target him personally.
5. But Mr. Mwendwa, the Learned advocate for the plaintiff insisted that the money which was advanced to the defendant was a personal debt.
6. It was the opinion of the plaintiff that if the defendant made a choice to use the money for the benefit of the company, that could not absolve the defendant from his personal liability.
7. Whilst conceding that the defendant had invited the court to rely on a letter exhibited by the plaintiff, to support his case, the plaintiff emphasized that it would become necessary for the court to interpret the contents of that letter. That was deemed important because each of the two parties was interpreting the letter in issue, in a manner which appeared to support their respective views.

8. The fact that one letter was capable of more than one interpretation was said to be reason enough to persuade the court not to use such a letter to back one party against the other.
9. In order to give itself an opportunity to fully interrogate the issues between the parties, the plaintiff invited this court to sustain the claim.
10. When called upon to reply to the plaintiff's submissions, the defendant submitted that unless there was a substitution of parties to this suit, the case was incurably defective. For those reasons, Ms Shaw reiterated that the suit should be struck out.
11. The law governing the striking out of pleadings is now well settled.
12. Even though it may prove difficult or perhaps unnecessary to have an encompassing definition of the term "*reasonable cause of action*", the courts are generally agreed that the invitation to strike out pleadings should only be accepted in cases which were plain and obvious.
13. In the case of **D.T. DOBIE & COMPANY (KENYA) LIMITED VS. JOSEPH MBARIA MUCHINA & ANOTHER CIVIL APPEAL NO. 37 OF 1978**, the Court of Appeal emphasized thus;

*"No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment"*.
14. Their Lordships expressed the view that if a case showed even just a semblance of a cause of action, which could be injected with real life, through an amendment, the court ought to allow such a case to go forward.
15. In this case, the defendant, Michael John Stanhope Duckworth is a director and the majority shareholder of **GEOGRID EAST AFRICA LIMITED**. That fact does not appear to be in dispute.
16. He says that the money being claimed from him was actually lent to the company. But the plaintiff insists that the money was lent to the defendant, personally.
17. There is a letter written on the letter – head of the company, dated 21<sup>st</sup> November 2013. The letter was signed by the defendant.
18. The letter states, *inter alia* as follows;

*"I am trying to establish the precise amount you paid to keep Geogrid going, for which I am eternally grateful and a reconciliation of accounts is in progress"*.
19. Whereas the plaintiff insists that the money was lent to the defendant personally, it is the defendant's understanding that the money was given by the plaintiff, to the company.
20. The said understanding can be discerned from the letter quoted above.
21. In the circumstances, I find that neither of the parties have, so far, presented the court with a plain and obvious proof as to whether or not the plaintiff loaned the defendant personally or Geogrid East Africa Limited.
22. Accordingly, it may still be possible for the plaintiff to prove his assertion, that the money was lent to the defendant personally. The converse is equally true; that the defendant

may yet prove that the money was lent to the company.

23. In the result, there is no merit in the application dated 27<sup>th</sup> May 2014. It is therefore dismissed, with costs to the plaintiff.

**DATED, SIGNED and DELIVERED at NAIROBI this 20<sup>th</sup> day of November 2014.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

.....for the Plaintiff

.....for the Defendant

Collins Odhiambo – Court clerk.