



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 2 OF 2013**

**ABIUD WASIKE .....}**

**ROSEMARY WASIKE .....} PLAINTIFFS**

**VERSUS**

**ALICE MUTHEE .....}**

**SAMUEL MUTHEE .....} DEFENDANTS**

**R U L I N G**

The Applicants brought a Notice of Motion seeking orders to strike off the defence filed herein. The Affidavit in support of the application was sworn by their Advocate James Wafula Masai who deponed that on 05/09/2012, the Defendants/Respondents went to his office and signed a document that they will pay rent arrears failing which they were to vacate the premises by 31/12/2012. He further depones that the Respondents did not honour their undertaking instead, they went to their lawyer who filed a sham defence which the Applicants now want to have struck out.

Mr. Wafula deponed in his Affidavit that the said document is annexed to the supporting Affidavit. The Respondents did not file Replying Affidavit or grounds of opposition. Their Advocate Mrs. Arunga contended that as the application was brought under Order 2 Rule 15 (1) (b) (c) and (d) it was mandatory that the Applicants had to indicate whether the defence is scandalous, frivolous or an abuse of the process of the Court. As the Applicants did not do so, she submitted that the application ought to be dismissed.

Striking out a pleading is a remedy which ought to be given sparingly and in the clearest of cases. In the present case, the Applicants contend that the Respondents had undertaken to pay rent arrears failing which they were to vacate the suit premises by 31/12/2012. The Applicants' Advocate who swore the Supporting Affidavit indicated in the Affidavit that the document had been annexed. A look at the annexed document shows that it has nothing to do with what is deponed in the Affidavit. The document annexed relates to agreement as regards auctioneers fees and Advocate fees. It may have been a case of annexing a wrong document but that does not help. The fact remains that the application as it is cannot be sustained. The same is hereby dismissed with costs to the Defendant/Respondents.

It is so ordered.

**Dated, signed and delivered in Open Court on this 24th day of June, 2013.**

**E. OBAGA**

**JUDGE**

In the presence of Mr. J. M. Wafula for Maurine Nafula for Applicant: Present. Mr. Nyamu for M/S Arunga for Respondent: Present.

Court Clerk: Joan.

**E. OBAGA**

**JUDGE**

**24/06/2013**