



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiki Investment Ltd v Kanyamwi Trading Co Ltd & 3 others (Environment & Land Case E004 of 2020) [2022] KEELC 2751 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2751 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E004 OF 2020  
LC KOMINGOI, J  
MAY 12, 2022**

**BETWEEN**

**KIKI INVESTMENT LTD ..... APPLICANT**

**AND**

**KANYAMWI TRADING CO LTD ..... 1<sup>ST</sup> RESPONDENT**

**DORIS NYAMBURA KARIUKI ..... 2<sup>ND</sup> RESPONDENT**

**ESTHER MWIKALI KARIUKI ..... 3<sup>RD</sup> RESPONDENT**

**TERRY WANJIRU KARIUKI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The 2<sup>nd</sup> defendant's notice of motion is dated June 15, 2021. It is brought under article 159(2), section 1A, 1B, 3A and section 6 of the *Civil Procedure Act* cap 21 Laws of Kenya and all other enabling provisions of the law.
2. It seeks orders:-
  - a) That this honourable court be pleased to strike out these proceedings in their entirety.
  - b) That in the alternative, this honourable court be pleased to grant an order for stay of proceedings in this matter pending the hearing and determination of Nairobi SC No 26 of 1985 In the Matter of the Estate of Josiah Mwangi Kariuki (deceased).
  - c) That the costs of this application be awarded to the 2<sup>nd</sup> defendant.



3. The application is supported by grounds on the face of the motion and the 2<sup>nd</sup> defendant's supporting affidavit sworn on June 15, 2021.
4. The plaintiff opposed the application. It filed the replying affidavit sworn, by its director George Ngunge Kariuki on November 8, 2021.
5. On the November 10, 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.
6. It appears the 2<sup>nd</sup> defendant did not file any written submissions.
7. I have considered the notice of motion and the affidavit in support. I have also considered the affidavit in response and the written submissions. The issue for determination is whether this application is merited.
8. Order 2 rule 15 of the [Civil Procedure Rules](#) provides that:-

- “(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 subrule (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.

9. In [Elijah Sikona & Another \(on behalf of Trusted Society of Human rights Alliance\) v Mara Conservancy & 5 others](#) [2014] eKLR; Anyara Emukule J when dealing with an application seeking to strike out a plaint observed that:-

“22. There are well established principles which guide the court in the 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.

23. A cause of action “a factual situation the existence of which entitles one person to obtain a remedy against another person” [Letang vs Cooper](#) [1965] OB 232. If a pleading raises a triable issue, hence disclosing a cause of action, even if at the end of the day it may not succeed, then the suit ought to go to trial. However, where the suit is without substance or it groundless or fanciful and/



or is brought or instituted with some ulterior motive or for some collateral one or to gain some collateral advantage which the law does not recognize as legitimate use of the court process, the court will not allow its process to be used as a forum for such ventures”.

10. I am not satisfied that the 2<sup>nd</sup> defendant/applicant has demonstrated that the suit herein does not disclose a reasonable cause of action or that it is an abuse of the court process.
11. The 2<sup>nd</sup> defendant/applicant also prays that this suit be stayed pending the hearing and determination of HC SC No 26 of 1985: In the matter of the Estate of Josiah Mwangi Kariuki (Deceased).
12. What are the similarities in the two suits? None. The plaintiff herein is not a party to the suit before the High Court Family Division neither does it have an interest in the proceedings in respect of the said Estate.
13. The suit property herein is LR NO 6564/11 (IR NO 199760) is registered in the name of the 1<sup>st</sup> defendant which is a limited liability company.
14. Finally, as par article 162 (2) (b) of the Constitution, this court has jurisdiction to entertain this matter.
15. In conclusion, I find no merit in this application and the same is dismissed with costs to the plaintiff/respondent.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 12TH DAY OF MAY 2022.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

**Mr. MCRonald for the Plaintiffs**

**No appearance for the 1<sup>st</sup> Defendant**

**Mr. Kahura for the 2<sup>nd</sup> Defendant**

**No appearance for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants**

**Steve - Court Assistant**

