



**Hamza v Abdalla & 3 others (Environment & Land Case
203 of 2014) [2022] KEELC 3689 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 203 OF 2014
NA MATHEKA, J
JULY 28, 2022**

BETWEEN

GHARIB SHEIKH ATHMAN HAMZA PLAINTIFF

AND

MAHMUD MOHAMED ABDALLA 1ST DEFENDANT

**STEPHEN ODDAGA T/A STEPHEN ODDIAGA & COMPANY AD
VOCATES 2ND DEFENDANT**

THAARA AUCTIONEERS 3RD DEFENDANT

EQUITY BANK LIMITED 4TH DEFENDANT

RULING

1. The application is dated January 22, 2020 and is brought under order 1 rule 10 (2), order 2 rules 15 and order 51 rule 1 of the *Civil Procedure Rules*, section 1A, IB and 3A of the *Civil Procedure Act* seeking the following orders;
 1. That the plaintiff's suit against the 3rd and 4th defendants herein be struck out.
 2. That costs of this application be provided for.
2. It is based on the grounds that the 1st defendant entered into a mortgage loan facility with the 4th defendant to finance the purchase of property title number Mombasa/Mwembelegeza/991. Based on the aforesaid facility, the 1st defendant purchased the suit property. The 4th defendant was a mere financier and therefore was not a party to the contract of sale between the plaintiff the 1st & 2nd defendant. The court via its order dated June 22, 2016 dismissed the plaintiff's application seeking injunctive orders as against the 3rd and 4th defendants herein; hence they proceeded to dispose of the property title number Mombasa/Mwembelegeza/991 on strict reliance to the said orders. The suit herein does not disclose any reasonable cause of action against the 3rd and 4th defendants and should



therefore be struck out ex-debito justitiae for misjoinder as prayed. Unless this application is allowed as prayed the 3rd and 4th defendants will be exposed to gross prejudice and stands to suffer irreparably. In the interest of just that this application is allowed as prayed.

3. This court has considered the application and submissions therein. The application was not opposed. order 2 rule 15 of the Civil Procedure Rules which provides as follows:-

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. “

4. Order 2 rule 15(2) of the Civil Procedure Rules provides that no evidence is admissible on an application under sub rule (1) (a) and therefore, it should be evident from the pleadings sought to be struck out that no reasonable cause of action has been disclosed without reference to further evidence. The court’s power to strike out pleadings therefore, is to be exercised sparingly and cautiously. In the case of DT Dobie & Company (Kenya) Ltd vs Muchina (1982)KLR 1 the court stated that;

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. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

5. The main principle to be considered in an application for striking out a pleading therefore is, whether triable issues have been raised. This application is based on the grounds that the 1st defendant entered into a mortgage loan facility with the 4th defendant to finance the purchase of property title number Mombasa/Mwembelegeza/991. Based on the aforesaid facility, the 1st defendant purchased the suit property. the 4th defendant was a mere financier and therefore was not a party to the contract of sale between the plaintiff the 1st and 2nd defendant. The court via its order dated June 22, 2016 dismissed the plaintiffs application seeking injunctive orders as against the 3rd and 4th defendants herein; hence they proceeded to dispose of the property title number Mombasa/Mwembelegeza/991 on strict reliance to the said orders. In the amended plaint dated July 10, 2015 the only mention of the 3rd and 4th defendants is in paragraph 3 which is merely descriptive of the parties. The amended plaint herein does not disclose any reasonable cause of action against the 3rd and 4th defendants. No prayer is sought against the 3rd and 4th defendants. I do not find them to be a necessary parties whose presence will enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. I find this application is merited and I grant the same as prayed.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF JULY 2022.

N.A. MATHEKA

JUDGE

