



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
CIVIL CASE NO. 906 OF 2009

SANNEX CLEANING SERVICES LIMITED
..... PLAINTIFF

VERSUS

ESSAR TELECOM KENYA LIMITED
DEFENDANT

R U L I N G

This is an application by way of Chamber Summons dated 10th March, 2010 and taken out under **Order VI Rules 13 and 16** of the **Civil Procedure Rules**. The Defendant/Applicant seeks from the Court orders that the pleadings filed herein be struck out and the suit be dismissed with costs. The application is based on the ground that the pleadings filed herein do not disclose a reasonable cause of action.

Opposing the application, the Plaintiff filed grounds of opposition in which it pleads that the application does not merit the orders sought on the ground that the plaintiff had been amended to expressly claim relief in the form of damages for breach of contract.

At the hearing of the application, Mr. Mbaluto for the Applicant stated that the application sought orders for the plaintiff to be struck out with costs to the Defendant. He relied entirely on the grounds stated on the face of the application.

Mr. Onyango for the Respondent argued that the application did not seek the Plaintiff to be struck out but rather that the pleadings be struck out. He argued that this did not specify which pleadings were to be struck out. He submitted that the Applicant had failed to tell the Court that the application was brought under **Rule 13 (a)**.

Counsel further argued that when the application was filed, the only document which had been filed by the Plaintiff was the plaintiff, and that was presumably the document which was sought to be struck out. The plaintiff was subsequently amended and the pleading referred to in the application is no longer the same as it was because of the amended plaintiff filed on 16th April, 2010. The application had therefore been overtaken by events and only the amended plaintiff can be addressed by the present application. He relied, *inter alia*, on the case of **D.T. DOBIE & COMPANY (KENYA) LTD. v. MUCHINA [1982] KLR 1** and submitted that it could not possibly be argued that the Plaintiff had no chances of success in this matter.

In his reply, Mr. Mbaluto argued that the amendment to the plaintiff was an afterthought after the

Defendant had requested the suit to be struck out. He further contended that the amendment did not comply with the provisions of **Order VI Rule 4** of the **Civil Procedure Rules**. He therefore prayed that the suit be struck out for not disclosing a cause of action.

I have considered the pleadings and submissions of Counsel. I note that the plaint in this case was filed on 16th December, 2009. The Plaintiff claims judgment in the form of a permanent injunction restraining the Defendant from terminating or in any other way interfering with the performance of the ongoing contract for cleaning services by the Plaintiff. This is the plaint in respect of which the application herein, which was filed on 12th March, 2010, sought to have struck out. However, on 21st April, 2010, the Plaintiff filed an amended plaint dated 16th April, 2010. As it is, this is the plaint that ought to be considered while addressing the application, as the plaint originally filed on 12th March, 2010, is no longer in use.

The words **“reasonable cause of action”** as used in **Order VI Rule 13 (1)** mean an action with some chance of success when the allegations in the plaint only are considered. They mean an act on the part of the Defendant which gives the Plaintiff his cause for complaint.

Having considered the pleadings and submissions of both Counsel, I find that the decided cases set out clear guidelines as to when a plaint can be struck out. In a nutshell, it cannot be doubted that the Court retains inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. But this is a jurisdiction which ought to be very sparingly exercised and only in exceptional cases. Quoting **Salmon L.J. in NAGLE v. Fiden & Ors. [1966] 2 QBD 633 at page 651**, Madan J.A. (as he then was) observed in the case of **D.T. DOBIE y Co. IKENYA) Ltd. v. MUCHINA (Supra at page 8)** that

“... It is well settled that a statement of claim should not be struck out and the Plaintiff driven from the judgment seat unless the case is unarguable. Accordingly it is necessary to consider where o r no a Plaintiff has an arguable case.”

Applying the above principles, the Plaintiff herein alleges that there was a contract of service between it and the Defendant. The details of the said contract and part performance thereof are outlined in the plaint. The Plaintiff also alleges that the defendant unlawfully terminated the contract on 3rd February, 2010. Without going into any further details, this is a clear plea for a breach of contract which, *prima facie*, is actionable, and that alone justified the Plaintiff in commencing these proceedings. It raises a reasonable cause of action.

For the above reasons, I find that the application to strike out the plaint in this case is not merited and it is hereby dismissed with costs. It is so ordered.

DATED and DELIVERED at **NAIROBI** this 14th day of October, 2010.

L. NJAGI
JUDGE