



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 871 of 2005

HON. PETER GATIRAU MUNYA.....PLAINTIFF

VERSUS

REGIONAL REACH LIMITED.....1ST DEFENDANT

KAMAU KANGETHE.....2ND DEFENDANT

JAMLECK MWONGELA ALIAS MWANA WA NTII.....3RD DEFENDANT

MPURU ABURI.....4TH DEFENDANT

RULING

This Ruling is delivered in an application by the 4th Defendant in this suit brought under the Provisions of Order VI Rule 13 of the Civil Procedure Rules, seeking for an order of striking out of the Plaintiff's suit against the 4th Defendant . The Chamber Summons under which the application is filed cites the entire Order VI Rule 13 without specifying the particular provisions of the Rule 13 under which the Plaintiff is sought to be struck out.

The grounds upon which the application are founded are that the suit

- (i) discloses no cause of action
- (ii) is scandalous, frivolous and vexatious
- (iii) is an abuse of the process of the court.

In support of the above grounds the Applicant contends that the entire Plaintiff fails to disclose a cause of action against him and that he has not filed any counter-claim in the suit, also that his co-Defendants have not filed any cross-claim against him.

The application is opposed by the Plaintiff on one hand and by the 1st, 2nd and 3rd Defendants on the grounds that the same offends the provisions of Order VI Rule 13(1)(a) which clearly requires that no affidavit be filed in an application made under it and that by failing to elect the provisions under which the application is made the Applicant is taking the court on a speculative venture. The Respondents also

argue that this is not a proper case for seeking striking out orders which orders can only be given in plain and clear cases, not where the merits of the case have to be considered. Whilst adopting the submissions by Mr. Omogeni for the Plaintiff, Miss Waki for the 1st, 2nd and 3rd Defendants added that this being a case in defamation the 4th Defendant having been mentioned in the words complained of and the same having been attributed to him is a proper defendant to be sued. I must say at this point that I agree with this submission. The words cited in paragraph 7 of the Plaint are attributed to the 4th Defendant being the person quoted in the news broadcast of 8th June 2005 at 9.00p.m.

Turning to the challenges on procedure I am of the considered view that although experience shows that a pleading can fall under any or all the grounds set out in order VI Rule 13 (1)(a)(b) and (c) Rule 2 of Order V Rule 13 clearly states that no evidence shall be admissible on an application under sub rule 1 (a), which provides for applications made for the striking out of a pleading for reasons that the pleading discloses no reasonable cause of action or defence. The Applicant supports his application by an affidavit sworn by the Applicant on 27th September 2005 and filed together with the Application on the same date. Save for paragraph 15 of the said affidavit in which the applicant swears that the suit against him is

“baseless, scandalous, frivolous and vexatious and ... only tailored to intimidate and cripple (him) financially....”

the rest of the Supporting Affidavit, particularly paragraph 8, 9, 10, 11, 12 and 13 is directed at showing or demonstrating that the suit discloses no cause of action against the plaintiff. I find this to be a fatal defect to the application for which it must fail.

I further find that since the 4th Defendant/Applicant has been named as the author of the statement voiced in the radio broadcast complained of he must be maintained in the suit in order for the court to adjudicate properly in the matter wherein the 1st and 3rd Defendants have admitted publishing the words said to have been spoken by the 4th Defendant. He cannot vindicate himself at this stage but should do so by giving evidence at the trial. In the circumstances, I find that in addition to my earlier findings, this is not a proper case for striking out the suit. It follows from the above that even though the Applicant has not submitted how the same is

“Otherwise (than by virtue of offending Order Rules 13(1)(a)(b) and (c) an abuse of the process of court.”

I will be quick to find that the suit is not in any way an abuse of the process of court. On the reasons given hereinabove the 4th Defendant/Applicant’s Chamber Summons of 27th September 2005 is hereby dismissed. Costs in the cause.

Dated at Nairobi this 23rd day of June 2006

M.G. MUGO

JUDGE

Delivered in the presence of

Mr. Gikunda for Applicant

Mr. Githinji holding brief Omogeni for Respondent