



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIORBI**  
**CIVIL SUIT NO. 1289 OF 2004**

JOSEPHAT R. AMWAYI .....PLAITNIFF/APPLICANT

VERSUS

THE MANAGING DIRECTOR  
KENYA PIPELINE CO. LTD .....1ST DEFENDANT/RESPONDENT  
KENYA PIPELINE CO. LTD ..... 2ND DEFENDANT/RESPONDENT

**RULING**

The Applicant seeks to strike out the Defence herein on the grounds that it is scandalous, frivolous and vexatious and an abuse of the process of the court.

For the Applicant Mr. Omari submitted that on a reading of the contents of the Supporting Affidavit and further affidavit sworn by the Applicant in support of this application, it can be seen that the publication was made in bad faith as the facts contained therein are not true.

To strike out a pleading is a drastic action, which is only exercised, in a clear case (see D.T. Dobie & Co. (Kenya) Ltd versus Muchina (1982) KLR page 1.

The Defence filed raises two issues namely:

1. That the words complained of were true and

2. That the words complained of were published on an occasion which was privileged. Whether or not these Defences can be sustained is a matter to be determined at the hearing of this suit and on evidence being adduced.

In the result I find no merit in the Application, which is dismissed with costs to Respondent.

**Dated and delivered at Nairobi this 19th day of May, 2005**  
**P.J. RANSLEY**

**JUDGE**