



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

Civil Suit 1262 of 2004

SHEM MUKOMA MURAYA 1ST PLAINTIFF
ESTHER WANJIRU MAINA 2ND PLAINTIFF
PRISCILLA NJOKI KIRUKU 3RD PLAINTIFF
GERALD KAMAU KARUGA 4TH PLAINTIFF
KUNGU THIONGO 5TH PLAINTIFF
DAVID THIGA KIHARA 6TH PLAINTIFF
KIMANI MWANGI 7TH PLAINTIFF
CHRISTOPHER NJOROGE 8TH PLAINTIFF
PIUS OLE MASHARIA 9TH PLAINTIFF
MARY WAMBUI KARUGA 10TH PLAINTIFF
GRACE WANJERI KIMANI 11TH PLAINTIFF
MONICA MWIHAKI 12TH PLAINTIFF
JOSEPH KIMANI KAMAU 13TH PLAINTIFF

VERSUS

PETER MBURU NGUGI (CHAIRMAN) 1ST DEFENDANT
GEOFFREY N. NYOIKE (SECRETARY) 2ND DEFENDANT
HOSEA MUTHAMA MWIKA (TREASURER)
(Sued as Officials of Karagita Self Help Mixed Group) 3RD DEFENDANT

RULING

This is an application under Order 6 Rule 13 of the Civil Procedure Rules to strike out the suit on the grounds that it discloses no reasonable cause of action, and that it is frivolous, vexatious and abuse of the court process.

Although it is not clear what sub-rules of Rule 13 the Applicant is relying on, it seems evident that Rule 13 (1) (a) has been invoked because the applicant seeks to strike out the suit because it discloses no reasonable cause of action. Under this sub-rule, no evidence is admissible, and the Court must simply look at the pleadings to determine whether a cause of action is disclosed. However, as the grounds in the application also refer to Rule 13 (1) b, c and d affidavit evidence may be considered to determine if the suit is frivolous, vexatious or an abuse of the court process.

Mr Ngala, Counsel for the Applicants argued that the suit disclosed no cause of action because it failed to disclose the “relationship” between the parties; that the dispute ought to be referred to arbitration; that the Applicant had not complied with Order 1 Rule 8 in that leave of the Court had not been sought to sue in a representative capacity; and that the suit had been filed in the wrong court.

Having looked at the Plaintiff, I am satisfied that it discloses a reasonable cause of action. The Plaintiffs claim that the defendants are in office irregularly and want all money and land transactions frozen. There are triable issues in this suit. Secondly, leave of court is not required under Order 1 Rule 8 to sue in a representative capacity. That such leave is required is an erroneous view held by many Counsels. A careful reading of that Rule would show that there is no such requirement in the Kenyan Civil Procedure Rules, unlike in Uganda and India where the Rules expressly require leave of Court.

Thirdly, the Applicants have not shown how and why this matter should be referred to Arbitration, and finally, the High Court has jurisdiction throughout this country.

I, therefore, see no basis to the Applicants’ argument that the suit should be struck out. In any event, the Court’s summary powers should not be invoked except in very clear situations.

Madan, J A, as he then was, has placed the law of striking out the pleadings in proper footing in the case of *D. T. Dobie & Company (K) Limited vs Muchina & Another* (Civil Appeal No. 37 of 1978). He stated:

“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”.

He has adopted various definitions of a cause of action and one of them is as per Lord Pearson who observed that **“a cause of action is an act on the part of the Defendant which gives the Plaintiff his cause of complaint.”**

In *Trade Bank Ltd vs Kersam Ltd (HCCC # 6662 of 1991 – Nairobi)* Pall, J, (as he then was) stated that “the exercise of this summary power to strike out a pleading is only in plain and obvious cases when the pleading in question is on the face of it unsustainable.” In *Samuel Gitonga vs Peter Mugweru (HCCC # 3356 of 1989 – Nairobi)* Bosire, J (as he then was) said “striking out pleadings is a draconian measure. It must and can only be done in the clearest of cases – viz. where it is clear that the defence or plaint as the case may be is beyond resuscitation by amendment.”

This is clearly not one of those situations where the Court should invoke its summary jurisdiction.

Accordingly, the application dated 21st January, 2005 is dismissed with costs to the Respondents/Plaintiffs.

Dated and delivered at Nairobi this 8th day of December, 2005.

ALNASHIR VISRAM

JUDGE