



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO.1700 of 2000**

**TETRA PAK LIMITED ..... PLAINTIFF**

**VERSUS**

**NDERITU WACHIRA T/A**

**NDERITU WACHIRA & COMPANY ACCOUNTANTS ..... DEFENDANT**

**RULING**

This is an application to strike out the plaint filed herein by the plaintiff on the ground that the plaintiff has sued the receiver/manager appointed outside court in his own name as the defendant. It is also claimed in the application that the plaintiff has improperly sued the defendant in relation to a matter in which he was merely an agent of a disclosed principle. On behalf of the plaintiff, it was conceded that mistakes were made in drafting the plaint and that since the filing of the suit, steps had been taken to rectify the situation by applying for leave to amend the plaint. In that connection, it was argued on behalf of the plaintiff that the error appearing in the plaint was curable by amendment.

Regarding that submission, Mr. Katiku for the plaintiff submitted that an application to amend the plaint had been filed and was scheduled to be heard on 23.1.2001. It is trite law that the striking out of pleadings is a drastic step which should only be taken in plain and obvious cases. If real life can be injected into the suit by amendment, then striking out is not the remedy, provided of course that the defendant is not prejudiced thereby (see D. T. Dobie & Company Limited V. Joseph Mbaria Muchiu (Court of Appeal, Civil Appeal No. 37 of 1978).

Having carefully considered this matter, I am satisfied that the errors and defects in the plaint referred to by Mr. Amolo for the defendant can be cured by the proposed amendment of the plaint which is already filed. Consequently, striking out is not an appropriate remedy in the circumstances of this matter. For that reason the application is dismissed. Costs of the application will be in the cause.

Dated at Nairobi this 1st day of February, 2001.

**T. MBALUTO**

**JUDGE**