

REPUBLIC OF KENYA
Project Electricals Ltd v Susan Munyi T/A Susan Munyi &
Company Advocates
High Court of Kenya at Nairobi December 15, 2000
Milimani Commercial Courts
T Mbaluto, Judge
Civil Case No 696 of 2000

December 15, 2000 T Mbaluto, Judge delivered the following ruling. The applicant who is the defendant in this matter has brought this application for an order to strike out the plaint filed herein on April 12, 2000 allegedly because it does not disclose any cause of action; that it's fatally defective; was filed without a resolution authorising the filing of the same and that no returns have been filed by the plaintiff for the years 1997, 1998 and 1999 and that no resolutions have been filed for the year 2000. As regards the passing of a resolution to commence the suit and the filing of returns and resolutions, I must confess I am not aware of any law which requires that such matters be pleaded and accordingly, I consider the grounds not only as frivolous but also wholly devoid of any merit. In my view, the issue whether or not a resolution was passed authorising the institution of the suit or whether the company is somehow incapacitated from filing suit by reason of some contravention of the law (eg Failure to file returns etc) is a question of evidence which can only be resolved upon trial of the suit. It cannot be the basis for striking out a pleading. In this respect I think the decision of Githinji, J in the case of Gerald Gikonyo & Another v Wamuchege K Gatu and 3 others (HCCC No 2002/96) cited by learned counsel for the applicant is distinguishable from this case as it was not dealing with the issue of striking out pleadings.

The applicant also contends that the plaint not only discloses no cause of action but is also defective but considering that it is alleged in the plaint that the plaintiff advanced a loan of Kshs 600,000 at an agreed interest rate of 30% (full particulars of which the defendant is alleged to have known) and that there was default in repayment of the loan, which averments in my view

disclose a complete cause of action, I am unable to see the basis of the defendant's contention. In my view the defendant should have sought particulars if she was not satisfied with the way the plaint was filed. On the grounds put forward and canvassed by the defendant there is no basis for striking out the plaint. The application therefore lacks merit and is dismissed with costs. www.kenyalawreports.or.ke