



REPUBLIC OF KENYA



Kinoyio Company Limited & 2 others v Ngotho & 2 others (Environment & Land Case 174 of 2018) [2024] KEELC 601 (KLR) (9 February 2024) (Ruling)

Neutral citation: [2024] KEELC 601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 174 OF 2018**

**A OMBWAYO, J
FEBRUARY 9, 2024**

BETWEEN

**KINOIYO COMPANY LIMITED 1ST PLAINTIFF
IBARHIM SURAW ISSAC 2ND PLAINTIFF
ABDI MOHAMED HASSAN 3RD PLAINTIFF**

AND

**DOUGLAS KAMAU NGOTHO 1ST DEFENDANT
HERMAN NDERI 2ND DEFENDANT
NAKURU LAND REGISTRAR 3RD DEFENDANT**

RULING

1. The plaintiff applicant has come to court with application that 1st and 2nd Statement of Defence and Counter-Claim dated 27th June 2018, amended counter claim dated September 2019 and 3rd Defendants Statement of Defence dated 28th June 2019 be struck out and Costs of this Application be granted to the Plaintiff/Applicants.
2. The application is based on grounds that the statement of defence and counter claim of the 1st defendant and 2nd defendant is wanting in seriousness and is an abuse of the process of the court.
3. The 1st and 2nd Statement of Defence and Counter-Claim dated 27th June 2018, Amended Counter-claim dated September 2019 and 3rd Defendants Statement of Defence dated 20 June 2019 should be struck out in accordance with order 2 rule 15 of the Civil Procedure Rules. The Statement of Defence and counterclaim are wanting and offer a blanket of issues which tend to delay the Plaintiff in realizing their claim.



4. The two Statements of Defence and amended Counter-claim lack any triable issue and are in contravention of order 2 rule 4 (2) of the [Civil Procedure Rules](#) which requires that a
5. defendant to an action for the recovery of land shall plead specifically every ground of Defence he relies on and a plea that he is in possession of the land is not sufficient. The 1st and 2nd defendants in paragraph 12 and paragraph 9 of the 3rd Defendants Statement of 3rd Defence merely denies that they illegally took possession of the suit property but do not demonstrate how they acquired the suit property or how it came to their possession.
6. The two Statements of Defence and amended Counter-claim are an abuse of the process of the court since the 1st Defendant has entered into a consent with plaintiff dated 21st July 2023 to the effect that the 2nd and 3rd Plaintiffs are the registered and absolute owners of land parcel number Nakuru/ Municipality Block 11/128, Consequently the 2nd Defendant has no interest in the suit property. The Statement of Defence is therefore baseless and tends to embarrass the court process.
7. The suit property herein was the subject of Nakuru CMCR No. 3572 of 2018 Republic -Vs- Douglas Kamau Ngotho where the court convicted the 1st respondent herein of offences of Forgery and Uttering False Documents contrary to sections 350 (l) and 353 of the [Penal Code](#), and the 2nd Respondent denied knowledge of the case. The 1st and 2nd Respondents had been charged in that case of Forgery and Uttering False Documents contrary to sections 350 (l) and 353 of the [Penal Code](#).
8. The application supported by the affidavit of Ibarhim Suraw Isaac that reiterates the grounds of the application. The 1st defendant filed a replying affidavit which is basically an admission of the claim.
9. The jurisdiction to strike out pleadings is discretionary and must be exercised judicially. In [Postal Corporation of Kenya v I.T Inamdar & 2 Others](#) [2004] 1 KLR 359, the court stated that the law is now well settled that if the defence filed by a defendant raises even one bona fide triable issue, then the defendant must be given leave to defend.
10. In [Olympic Escort International Co. Ltd. & 2 Others v. Parminder Singh Sandhu & Another](#) [2009] eKLR, the court opined that a triable issue is not necessarily one that the defendant would ultimately succeed on but it need only be bona fide.
11. In the [Co-Operative Merchant Bank Ltd. v George Fredrick Wekesa](#) (Civil Appeal No. 54 of 1999) the Court of Appeal stated:

Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent's action or which is otherwise an abuse of the process of the court.
12. In [Yaya Towers Limited v Trade Bank Limited \(In Liquidation\)](#) (Civil Appeal No. 35 of 2000) the same court expressed itself thus:

A plaintiff (defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant (plaintiff) can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly



exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved.

13. Similarly, in *D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, Madan JA, 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.

14. I do find that the defence and counter claim of the 1st and 2nd defendants is an abuse of the court process and the same are made to delay the actualization of the plaintiffs claim because the 1st and 2nd defendants were convicted of fraud and that the replying affidavit filed is an admission of liability. I do grant an order that the 1st and 2nd defendants Statement of Defence and Counter-Claim dated 27th June 2018, amended counter claim dated September 2019 and 3rd Defendants Statement of Defence dated 28th June 2019 be and are hereby struck out and Costs of this Application is granted to the Plaintiffs/Applicants.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 9TH DAY OF FEBRUARY 2024.

A O OMBWAYO

JUDGE

