



**Syan & 2 others v Kihoro (Environment and Land Case Civil Suit 517 of 2017) [2024] KEELC 624 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 624 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 517 OF 2017  
LN MBUGUA, J  
FEBRUARY 8, 2024**

**BETWEEN**

**SURINDERPAL SINGH SYAN ..... 1<sup>ST</sup> PLAINTIFF**

**JASMEER SINGH SYAN ..... 2<sup>ND</sup> PLAINTIFF**

**SANATUMAR SHATILAL TRIVEDI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**WANYIRI KIHORO ..... DEFENDANT**

**RULING**

1. The Plaintiffs' Notice of Motion application dated 13.10.2023 is for determination. They seek orders striking out the Defendant's amended defence and counterclaim dated 5.1.2009 as well orders that judgement be entered as prayed in the plaint.
2. The application is premised on grounds on its face and on the 1<sup>st</sup> Plaintiff's supporting affidavit sworn on 13.10. 2023. She avers that around 1<sup>st</sup> April 2001, the registered proprietors of LR No. 1/205 Ranjeet Singh Syan and Sanatumar Shatila Trivedi entered into a tenancy agreement with Dr. Wanjiru Kihoro, the Defendant's late wife to lease the suit property for 2 years.
3. That after the said lease had lapsed, the Defendant continued to illegally reside in the suit property without paying rent on account of allegations that his late wife had purchased the suit property prompting the Plaintiffs to file this suit.
4. That in response to the suit, the Defendant filed a defense and later, an amended defense and counterclaim dated 5.1.2009 and made references to a purchase agreement dated 15.1.2003 and a conveyance as his evidence.
5. That the said documents triggered the Plaintiffs to lodge a complaint with the Director of Criminal Investigations against the Defendant for investigations on forgery claims. Criminal proceedings being



Kibera Criminal Case Number 5220 of 2015 were then instituted against the defendant and in the court's judgment of 1. 12.2022, the Court found the Defendant guilty of 4 counts of forgery in respect of several documents including the aforementioned sale agreement and the conveyance. Subsequently, on 9.4.2023, the Defendant was sentenced and fined ksh. 100,000/= or serve a 12-month jail term for each count of forgery.

6. That in view of the finding by the criminal Court, the Defendant has no reasonable defence and counterclaim as the same is premised on illegal and forged documents rightfully declared by a competent court, thus his defence and counterclaim should be struck out for being scandalous.
7. It is also averred that the counterclaim filed by the Defendant is void ab initio as he has no locus standi having filed the same in his personal capacity and not as an administrator of his late wife's estate.
8. The Defendant opposed to the application by a preliminary Objection dated 14.11. 2023 in which he raises 4 grounds of objection. He contends that his defence has been on record for 15 years and if struck out, the court will not give a fair hearing as the Plaintiff has already joined issues with him.
9. The application was canvassed by way of written submissions. The Plaintiff filed written submissions dated 15.11. 2023. It is submitted that there are clear manifest circumstances for striking out the Defendant's defence and counterclaim since the Defendant was guilty of forgery in respect of all documents that he relies on in his case. It is further submitted that the Defendant had no capacity to file the counterclaim on behalf of his deceased wife thus his claim is void.
10. The case of Daniel Njuguna Mbugua v Peter Kiarie Njuguna & 2 others [2021] eKLR and Jonathan Namulala Nyongesa v Multi Business Shooters Investors Ltd & 3 others [2017] eKLR are cited to submit that a party cannot claim ownership of a property if the alleged ownership documents are forgeries and if he has no locus standi.
11. The Defendant did not file submissions.

### **Determination**

12. The issue falling for determination is whether the defence and counter claim of the defendant should be struck out paving way for entry of judgment against the said defendant.
13. The provisions of Order 2 Rule 15 (1) of the Civil Procedure Rules gives this Court power to strike out pleadings.
14. In determining whether a defence should be struck out, the court is called upon to tread carefully so as not to discuss the merits of the case. See DT Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1. Further, in Kenya Trade Combine Ltd v N. M. Shah [2001] eKLR, it was stated that;

“In a matter of this nature, all that a Defendant is supposed to show is that a defence on record raises triable issues which ought to go for trial. We should hasten to add that in this respect a defence which raises triable issues does not mean a defence that must succeed.”

15. In Kivanga Estates Limited v National Bank of Kenya Limited [2017] eKLR, it was held;

The rules of natural justice require that the court must not drive away any litigant from the seat of justice, without a hearing, however weak his or her case may be. The flip side is that it is also unfair to drag a person to the seat of justice when the case brought against him is clearly a non-starter. The exercise of the power to strike out pleadings must balance these two rival considerations.



16. In *Vehicle and Equipment Leasing Limited v Coca Cola Juices Kenya Limited* [2017] eKLR, the court stated that a single triable issue is enough to deny a claimant the summary judgment.
17. It is not disputed that an alleged sale agreement dated 5.1.2003 and a conveyance conveying LR No. 1/205 to Wanjiru Kihoro, the Defendant's late wife were subjected to forensic investigations in a criminal trial in Kibera Criminal Case Number 5220 of 2015 and found to be forgeries. The Defendant was subsequently convicted and sentenced. There is no evidence that the defendant challenged the said conviction arising from a judgement delivered on 1.12.2022.
18. In his counterclaim the defendant is primarily seeking a declaration that the suit property L.R.NO.1/205 belongs to the estate of his late wife based on a claim of purchase. The documents he is relying upon are the same ones which led to his conviction in the criminal matter as they were found to be forgeries. It follows that even if the defence and counterclaim have been on record since year 2009, the said defence can no longer stand in view of defendant's conviction in the criminal matter.
19. An issue has also been raised by the plaintiff's that the defendant has no capacity to lodge forth a counter claim. Indeed in the said counterclaim, the defendant desires that the property in dispute be handed over to the estate of his late wife. In his preliminary objection which was his response to the application, the defendant was mute on this issue, he never clarified as to whether he had letters of administration for the estate of Wanjiru Kihoro.
20. Section 82 (a) of the *Law of Succession Act* confers power on personal representatives to bring a suit on behalf the Estate of a deceased person. The Defendant had no letters to clothe him with locus to file a counterclaim on behalf of the estate of his deceased wife. To this end, I find that the case of *Daniel Njuguna Mbugua v. Peter Kiarie Njuguna & 2 others* [2021] eKLR cited by the plaintiff's is applicable herein. In the circumstances I find that the counterclaim of the defendant was dead on arrival even if it was filed more than a decade ago.
21. In the end, I find that the defendant has no reasonable cause of action in this matter and that his defence no longer raises any triable issues. Thus the application dated 13.10.2023 is found to be merited to the extent that the defendant should not reside in the suit property. The final orders are as follows;
  1. The defence and counterclaim of the defendant are hereby struck out.
  2. An order of eviction of the defendant is hereby issued as sought in prayer No. (a) in the plaint.
  3. The matter is to be listed for formal proof in respect of prayer Nos. b and c in the plaint.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Mupa M'Mbetsa for Plaintiff

Wanyiri Kihara

Court Assistant: Cheronno

