



**Sanyi Jituan Sensen Investment Limited & another v Equity Bank of Kenya Limited & another
(Environment & Land Case E024 of 2024) [2024] KEELC 3636 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E024 OF 2024
EK WABWOTO, J
APRIL 5, 2024**

BETWEEN

**SANYI JITUAN SENSEN INVESTMENT LIMITED 1ST PLAINTIFF
JINGXI JUNJIE REAL ESTATE DEVELOPMENT COMPANY
LIMITED 2ND PLAINTIFF**

AND

**EQUITY BANK OF KENYA LIMITED 1ST DEFENDANT
PHILLIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT**

RULING

1. This ruling is in respect to the 1st Defendant’s Notice of Motion application dated 2nd February 2024 which sought for:
 - i. ...Spent.
 - ii. ...Spent.
 - iii. The Complaint dated 25th January 2024 be struck out.
 - iv. The costs of the suit and this application be awarded to the 1st Defendant.

2. The application was premised *inter alia* on the following grounds, the plaintiffs had previously filed ELC E210 of 2023 involving the same parties and the same subject matter filed on 13th December 2023, the 1st plaintiff alleged that the 1st defendant committed fraud by selling the C-Plots without disclosing that there were claims from third parties and after obtaining orders in this instant suit, the plaintiffs filed a notice of withdrawal in E210 of 2023 on 29th January 2024. The 1st plaintiff is also sued as a 1st defendant in ELC E075 of 2023, to which the 1st plaintiff did not disclose the proceedings and the orders made. The plaintiffs’ conduct is a clear abuse of the Court process due to repeated applications



seeking the same relief without pursuing a matter to conclusion and unless this application is heard urgently and in priority, there is a risk of this Court issuing orders that may be in conflict with orders in ELC E075 of 2023, which is likely to embarrass the court.

3. The application was supported by the affidavit sworn by Kariuki King'ori the Legal Manager of the 1st Defendant. The deponent reiterated the contents of the grounds made in support of the application.
4. The application was opposed by the Plaintiffs vide a Replying Affidavit sworn on 19th February 2024 by Ye Yongqing a director of the Plaintiffs. It was deposed that ELC Case No. E075 of 2023 did not include the 2nd Plaintiff's property known as L.R No. 4858/4 Kileleshwa and also that it would defeat justice if the current suit is struck out.
5. The application was canvassed by way of written submissions. The 1st Defendant filed written submissions dated 19th February 2024 while the Plaintiffs filed written submissions dated 25th March 2024 which the court has duly considered.
6. The court having considered the respective submissions; rival affidavits and the authorities cited is of the view that the salient issue for determination herein is whether this suit should be struck out.
7. As we operate in the post-2010 Constitutional era, it is of notable importance that striking out of a suit is considered draconian and only applicable in exceptional circumstances. In this instance, the issue of conflicting orders and the suit involving same parties and subject matter leads this court to determine whether the suit is *res judicata* in view of ELC E210 of 2023 and ELC E075 of 2023.
8. Section 7 of the [Civil Procedure Act](#), reveals that for the bar of *res judicata* to be effectively raised and upheld, the party raising it must satisfy the doctrine's five essential elements which are stipulated as follows : -
 - i) The suit or issue raised was directly and substantially in issue in the former suit.
 - ii) That the former suit was between the same party or parties under whom they or any of them claim.
 - iii) That those parties were litigating under the same title.
 - iv) That the issue in question was heard and finally determined in the former suit
 - v) That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.
9. The jurisdiction to strike out pleadings is discretionary and must be exercised judicially. 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”.



10. 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”.

Similarly, in *D.T. Dobia & 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”.

11. On the face of it, it is undoubted that the parties in this instant suit are the same as those in E075 OF 2023. However, there is a stark difference in that, this instant suit has property known as LR No. 4858/4 located in Kileleshwa which was not part of the properties mentioned in the other suits. Being a Court that is bound by the pleadings of the parties, I must further underscore that no evidence was adduced by the 1st Defendant in support of the application seeking to strike out the suit. It is evident that striking out the same without hearing the parties would be draconian since the same discloses triable issues that can only be determined during trial. Taking all the above into consideration, I do not consider this to be a proper case for striking out.
12. In view of the foregoing, it is the finding of this court that that the 1st Defendant’s application dated 2nd February 2024 is unmerited and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF APRIL 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Odhiambo for the Plaintiffs.

Mr. Ondieki for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant; Caroline Nafuna.

