



Kitoka Service Limited v Pari Pet Holding Limited (Land Case E008 of 2024) [2024] KEELC 5293 (KLR) (10 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5293 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
LAND CASE E008 OF 2024**

**CK NZILI, J
JULY 10, 2024**

BETWEEN

KITOKA SERVICE LIMITED PLAINTIFF

AND

PARI PET HOLDING LIMITED DEFENDANT

RULING

1. This ruling relates to an application dated 16.5.2024 asking the court to strike out the suit for lack of compliance with Order 4 Rule 1(4) & Order 9 (2) of the Civil Procedure Rules.
2. The application is supported by grounds on its face and two affidavits by Lawrence Mwenda Riungu sworn on 16.5.2024.
3. The gist of the application is that no resolution or authority to institute the suit was attached to the verifying affidavit, hence rendering the suit incompetent and defective in law *ab initio*.
4. The application is opposed by replying affidavits of Agnes N. Muriuki sworn on 22.5.2024 and 7.6.2024.
5. It is averred that the deponent is a director of the plaintiff company as per a search that held a directors meeting and passed a resolution to file the suit. The two are annexed as ANM “1” and “2” which unfortunately was not filed alongside the plaint due to an inadvertent mistake. She terms the objections as aimed at clouding the salient issues of trespass and illegal construction on the suit land.
6. The defendant avers that the resolution was made on 2.3.2024 and that the applicant has no capacity to interrogate or question it except to split hairs in a matter involving weighty issues. The respondent admits that there was an honest mistake which it regrets, on the state of the resolution as per a corrected one attached as annexure ANM “3” and clarified in a further witness statement attached as ANM “4”. The applicant relied on written submissions dated 6.6.2024.



7. Reliance was placed on *KCB Ltd vs Stage Coach Management Ltd* (2014) eKLR and *Steel Former Ltd 595 (K) Ltd & another* (2020) eKLR.
8. The applicant termed the purported resolution as crafty and belatedly tailor-made after filing the suit and service of this application, to subvert the cause of justice otherwise it would have been referred to in the plaint or list of documents dated 12.2.2024.
9. Additionally, it was submitted that leave to file additional documents was not sought or obtained.
10. The applicant submitted that it was unbelievable and inconceivable that the plaintiff would have forgotten to surrender such a crucial document to her lawyers on record, relying on sickness and old age. The applicant termed the resolution as invalid for dating.
11. The respondent filed written submissions dated 7.6.2024 that there was no dispute that the plaintiff was incorporated a resolution has since been filed an explanation of not filing it together with the suit has been offered and that it was in the interest of justice to sustain the suit. Reliance was placed on *Spire Bank Ltd vs Land Registrar and others* (2019) eKLR.
12. The *Presbyterian Foundation & another vs East Africa Partnership Ltd & another* (2012) eKLR, *Leo Investment Ltd vs Trident Insurance Co. Ltd* (2014) eKLR, *Rymark Ltd vs John Lokorio* NRB ELC No. 147 of 2019 (2021) eKLR, *Makupa Transit Shade Ltd & another vs Kenya Ports Authority & another* (2015) eKLR and *Kenya Agricultural Livestock Research Organization vs Leah Okoko & another* (2022) eKLR.
13. By a plaint dated 12.4.2024 the plaintiff describing itself as an incorporated company sued the defendant for trespass to L.R No. Meru Municipality Block II 26 & 27. The verifying affidavit was signed by Agnes N. Muriuki, a director of the plaintiff. The defendant entered an appearance and filed a statement of defence dated 16.5.2024, terming the suit defective for lack of a board resolution. That in *Spire Bank Ltd vs Land Registrar & 2 others* (supra), the court cited *Makupa Transit Shade Ltd & another vs KPA* (supra), that if a deponent states he is duly authorized, the burden is on the other side to prove that such a deponent is not authorized.
14. The court said that the intention of Order 4 Rule 1 (4) of the *Civil Procedure Rules* was to safeguard the corporate entity by ensuring that only authorized officers could institute proceedings on its behalf, otherwise unauthorized persons may do so by obtaining fraudulent or unwarranted orders from the court.
15. In this suit, the deponent at the verifying affidavit disclosed that she was a director of the plaintiff company having authority to make and swear the affidavit. That fact has been confirmed by the search from the registrar's business registration service. The applicant has no rival evidence that that deponent is an imposter or an unknown director to the plaintiff company. The prejudice suffered by the defendant on the alleged omission to file the documents alongside the suit is unclear since it was sufficiently and without request for better particulars able to file a substantive defence to the suit.
16. The upshot is I find the application lacking merits. It is dismissed with no order as to costs.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 10TH DAY OF JULY, 2024

HON. C K NZILI

JUDGE



In presence of

C.A Kananu/Mukami

Mr. Muriuki for respondent

