



Ikua v Kilifi Plantations (2014) Limited (Environment & Land Case 42 of 2022) [2023] KEELC 18051 (KLR) (7 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18051 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 42 OF 2022**

EK MAKORI, J

JUNE 7, 2023

BETWEEN

WANJIRU IKUA PLAINTIFF

AND

KILIFI PLANTATIONS (2014) LIMITED DEFENDANT

RULING

1. The application dated February 27, 2023 seeks to have the entire suit struck out and the injunctive orders in place issued on February 1, 2023 be vacated with costs.
2. Counsels in this matter argued their application orally.
3. The attorney for the Applicant asserts that the details of the fraud pleaded following the amendment to the plaint are ambiguous and are directed at one of the Company's directors, Mr Chris D Wilson, rather than the Respondent. As a result, the court should review the amended plaint and decide that it does not disclose a cause of action against the defendants and is therefore appropriate for dismissal at this time.
4. The Respondents argue that the particulars of fraud have been proffered against the Defendant/Applicants and the matter needs to proceed to full trial.
5. The issue once again is whether the suit is fit for dismissal or striking out at this stage.
6. On February 1, 2023, on being propped by a Preliminary objection to have the entire suit dismissed for want of jurisdiction, this court made the following observations:

“The Plaintiff's claim of fraud can only be resolved at a full hearing. It is not something I can simply wish away. Order 2 Rule 10 (2) of the Civil Procedure Rules, states:



“The court may order a party to serve on any other party particulars of any claim, defence, or other matter stated in his pleadings, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the court thinks just”.

A suit filed by a plaintiff pleading fraud cannot succeed unless the Plaintiff specifically pleads the facts on which the Plaintiff relies on the alleged fraud or irregularities as stated in the plaint. This will also avoid an ambush on the Defendant and, of course, have an orderly business of the court proceedings and determination of the real issues at hand. It will also maintain equality of arms”

7. The plaintiff has pleaded specifics of fraud and illegalities particularized as a-f in paragraph 11 of the modified plaint. I am being persuaded to conclude that these allegations of fraud and illegality do not fulfill the criteria to be labeled as such and that they are instead directed at the Defendant's director, Mr Chris D Wilson, rather than the defendant. That after focusing my thoughts in this way, I would discover that the details are meaningless and that the lawsuit should be dismissed with costs.
8. The test for striking out the suit is as held in the case of [Blue Shield Insurance Company Ltd v Joseph Mboya Oguttu](#) [2009] eKLR thus:

“The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan JA (as he then was) in his judgment in the case of DT Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows:-

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice the fair trial and would restrict the freedom of the trial Judge in disposing of the case.”

We too would not express our opinion on certain aspects of the matter before us. In that judgment, the learned Judge quoted Dankwerts LJ in the case of Cail Zeiss Stiftung vs Ranjuer & Keeler Ltd and others (No 3) (1970) ChpD 506, where the Lord Justice said:-

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”

We may add that like Madan JA, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”

9. In my humble opinion, at this point, the court cannot set a standard to gauge the alleged "particulars of fraud and illegality" in the amended plaint and summarily determine that what is pleaded should not go to full trial. Instead, the court must strike out cases that are hopeless to give it the necessary time to hear other urgent grievances filed before it. Although the "particulars of fraud and illegality" may



seem extremely weak in the applicant's eyes, the court must hold a trial on the merits regardless of how weak the particulars may seem so that a party does not feel deprived of the seat of justice.

10. The upshot is that the application dated February 27, 2023 is hereby dismissed. It has fingerprints and mirrors the Preliminary Objection dated October 22, 2022.

11. I, therefore, dismiss it with no order as to costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS
7TH DAY OF JUNE 2023**

EK. MAKORI

JUDGE

In the Presence of: -

Mr. Mugambi for the Respondents

Mr. Mwai for the Applicants

