



REPUBLIC OF KENYA



**Peevans East Africa Limited v Ndungu & another (Commercial Case E002 of 2023)  
[2025] KEHC 2842 (KLR) (Commercial and Tax) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2842 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E002 OF 2023  
A MABEYA, J  
FEBRUARY 25, 2025**

**BETWEEN**

**PEEVANS EAST AFRICA LIMITED ..... PLAINTIFF**

**AND**

**PAUL WANDERI NDUNGU ..... 1<sup>ST</sup> DEFENDANT**

**ASENATH WACHERA MAINA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff filed the plaint dated 6/1/2023 seeking a permanent injunction to bar the defendants from interfering with its business in any way or acting on its behalf as well as general damages for loss of business.
2. The plaintiff averred that in direct violation of its Articles and Memorandum of Association, the defendants had filed frivolous and vexatious suits against its business partners and the regulators as well as making and publishing slanderous and false statements against its business partners and regulators, actions which damaged the plaintiff's credit, status and business integrity.
3. The defendants filed separate statements of defence in which they denied the plaintiff's allegations. They counterclaimed against the plaintiff on grounds of illegality and irregularity of the actions of the plaintiff's directors leading them to seek varied declarations and injunctions against the plaintiff.
4. In due course, the 2<sup>nd</sup> defendant filed an application dated 31/10/2023 in which he sought to be granted the particulars requested in her Request for Particulars dated 20/2/2023. She sought particulars contained in the following paragraphs of the plaint dated 6/1/2023 failing which the paragraphs be struck out;
  - a. Paragraph 7



- b. Paragraph 10
  - c. Paragraph 11
  - d. Paragraph 12 (a), (b) and (c)
  - e. Paragraph 13
  - f. Paragraph 13
  - g. Paragraph 18
  - h. Paragraph 19
  - i. Paragraph 21
  - j. Paragraph 22
  - k. Paragraph 23
  - l. Paragraph 24
  - m. Paragraph 25 and
  - n. Paragraph 30
5. The application was based on the grounds on the face of the application, that she required the said particulars to be able to defend herself and that her right to a fair hearing will be infringed if the hearing of the suit proceeded before the particulars requested were availed to her. The application was supported by her affidavit sworn on 31/10/2023.
6. On 21/11/2023, one Robert Macharia swore a replying affidavit on behalf of the plaintiff in opposition to the 2<sup>nd</sup> defendant's request for particulars dated 20/2/2023. He stated that that the 2<sup>nd</sup> defendant had not shown how the purported omitted particulars incapacitated her from rendering her statement of defence.
7. That the 2<sup>nd</sup> defendant's request was a fishing expedition aimed to assist her ventilate her issues, that it was an afterthought as it was filed after the 2<sup>nd</sup> defendant had filed her defence and counterclaim and that it was a delay tactic meant to delay the hearing and determination of the suit.
8. He further deposed that the 2<sup>nd</sup> defendant's application sought to prematurely determine the merits of the plaintiff's case without affording it the opportunity to testify and present evidence and was thus a violation of the plaintiff's right to a fair hearing as the 2<sup>nd</sup> defendant was in essence preempting and seeking answers to questions that she would have asked in cross-examination.
9. I have considered the rival contestations. The general rule of pleadings is that a pleading must be confined to facts. This rule is found in Order 2 rule 3(1) of the Civil Procedure Rules which provides that: -

“3(1) Subject to the provisions of this rule and rules 6, 7 and 8, every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits.”



10. It is those facts that enable the other side to know the case it is defending. The lack of facts essential to constitute a cause of action may render a pleading liable to be struck out for being evasive and embarrassing. Of course, facts must be distinguished from evidence. Evidence is the means by which the facts are proved. Evidence must not be set out in pleadings but are the subject of discovery rather than a request for particulars.
11. Order 2 Rule 10 of the Civil Procedure Rules requires that every pleading must contain the necessary particulars of any claim and provides that a party may apply for further particulars and the court may order such particulars on terms that it deems fit and just. The principle underpinning this provision of further particulars is that litigation between parties should be conducted in a fair and open manner. Ambush is not to be tolerated or encouraged.
12. In *Bruce v Odhams Press Limited* [1963] 1 KB 697, the court held that the function of particulars is to fill in the picture of the Plaintiff's cause of action which information, if sufficiently detailed, will put the defendant on guard as to the case it has to meet to enable it prepare for trial. In essence, the provision of particulars prevents surprise and informs the other party on what is going to be proved to enable him prepare his case.
13. I have considered the 2<sup>nd</sup> defendant's application and it is my view that looking at it wholly, the said request constitutes a request for evidence in form of documents which is a matter to be dealt with by the process of discovery. The 2<sup>nd</sup> defendant's request is seeking specific documents which constitute a request for evidence that will be adduced during the hearing and be subject to cross-examination.
14. I think the 2<sup>nd</sup> defendant should wait and obtain what she seeks through discovery and not through the request for particulars. The upshot of the above is that I reject the 2<sup>nd</sup> defendant's request as it constitutes a request for evidence.
15. Accordingly, I dismiss the application dated 31/10/2023 and order that costs be in the cause.  
It is so ordered.

**SIGNED AT KISUMU THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2025**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH, 2025.**

**F. GIKONYO**

**JUDGE**

