



REPUBLIC OF KENYA



KENYA LAW
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County Government of Kakamega v Tumaz & Tumaz Enterprises Limited & another; Group (Interested Party) (Civil Suit 1 of 2022) [2025] KEHC 2655 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL SUIT 1 OF 2022
AC BETT, J
MARCH 5, 2025**

BETWEEN

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF

AND

TUMAZ & TUMAZ ENTERPRISES LIMITED 1ST DEFENDANT

PONANGIPALLI RAMANA RAO 2ND DEFENDANT

AND

SARRAI GROUP INTERESTED PARTY

RULING

Background

1. The Plaintiff had filed a suit against the Defendants in which it prayed inter alia, for an order that the 1st Defendant be declared a vexatious entity (sic). The basis for the prayers were that the 1st Defendant had filed several cases in court against the 2nd Defendant and the Interested Party in regard to the leasing of Mumias Sugar Company Limited (in receivership) despite having not participated in or won the bid in the lease bidding process.
2. The particulars of frivolity attributed to the 1st Defendant were set out as follows:-
 - “ a) Filing cases challenging the leasing process without any basis.
 - b) Interfering with the work of the 2nd defendant and interested party without any basis.
 - c) Hampering the revenue collection from Mumias Sugar Company Limited (in receivership) by the plaintiff



- d) Interfering with the operations and management of Mumias Sugar Company Limited (in receivership).
- e) Colluding with other entities to frustrate the revival and operations of Mumias Sugar Company Limited (in receivership).
- f) Filing vexatious suits against the 2nd defendant and interested party with sole intention of derailing the process of leasing and operations of Mumias Sugar Company Limited (in receivership).
- g) Trying to intermeddle with the leasing process in which they never participated in by bidding.”

3. It was the Plaintiff’s case that the 1st Defendant had filed the various cases which included:-

- (i) Kakamega HCCC No. 10 of 2021
- (ii) Nairobi H.C. Judicial Review Application No. 178 of 2021
- (iii) Public Procurement Administrative Review Board Application No. 163 of 2021.

4. The Plaintiff averred that the 1st Defendant’s actions are frivolous, vexatious and in bad faith and with the sole intention of sabotaging the economic recovery of Mumias town, its residents, the company’s workers, the farmers who depended on payment of supplies of raw materials, the business community in the area, and the Plaintiff who relied on the revenue collected from the company to provide services to the residents of the County.

5. By a notice of preliminary objection dated 17th May 2023, the 1st Defendant gave notice of its intention to raise a preliminary objection on points of law, to the plaint dated 7th January 2022 on the following grounds:-

- 1. That the plaint dated 7th January 2022 is incompetent for want of locus standi and proper procedure in filing the same as it contravenes Section 2 (1) of the *Vexatious Proceedings Act*, 2012.
- 2. That only the Attorney General has the power to file suit seeking to declare a person vexatious litigant/entity as per Section 2 (1) of the *Vexatious Proceedings Act*.

6. The preliminary objection is the only issue pending determination in this suit as the parties are all agreed that the other issues raised in the suit were dealt with in Insolvency Case No. E004 of 2022.

7. Perhaps, because of the fact that the Company was not declared insolvent and the issues touching on the other parties had been dealt with, the Plaintiff seems to have lost interest in the suit for despite being served to attend court, and despite indicating that they would wish to withdraw the suit, they have failed to attend court on several occasions or to record the intended consent.

8. Be that as it may, on 16th December when the matter came up for mention to confirm settlement, the 1st Defendant urged the court to consider the preliminary objection since it was the only outstanding issue in the circumstances. The 2nd Defendant and the Interested Party said that they did not have any interest in the preliminary objection.

Analysis And Determination

9. Despite being served, the Plaintiff neither responded nor submitted to the preliminary objection.



10. The law on preliminary objections is settled. In the case of Mukisa Biscuit Manufacturing Company Limited v. West End Distributors Company Limited [1969] EA 696, the Court of Appeal enunciated the principles of a preliminary objection as follow:-

“...so far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

The court went on to state:-

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

11. The law that governs vexatious proceedings in Kenya is the *Vexatious Proceedings Act*, CAP 41, Laws of Kenya. Section 2 of the Act empowers the High Court to declare a person a vexatious litigant.

12. Section 2 (1) of the *Vexatious Proceedings Act* stipulates that:-

“If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious proceedings, whether civil or criminal, and whether in the High Court or in any subordinate court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, make an order declaring such person to be a vexatious litigant.”

13. A simple reading of Section 2 (1) of the Act is that it is only the Attorney General who has the mandate to institute proceedings to have a person or an entity declared a vexatious litigant.

14. A vexatious litigant is defined in Black’s Law Dictionary Tenth Edition as “A litigant who repeatedly files frivolous law suits”.

15. In the local context, a vexatious litigant was defined in the case of Attorney General v. Meshack Ochieng T/A Mecko Enterprises Ltd [2019] eKLR where the court quoted a decision in the case of Camerado Insurance Agency v. Superior Court of Sacramento County CV 52538 (STOLZ) [1993] in which it was held that a vexatious litigant is a person who does any of the following:-

- “a) In the immediately preceding seven year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been; Finally determined adversely to the person or Unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing
- b) After a litigation has been finally determined against the person, he/she repeatedly re-litigates or attempts to re-litigate in propria persona either:



- i) The validity of the determination against the same defendant as to whom the litigation was finally determined or
 - ii) The cause of caution, claim or controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant
- c) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery or engages in other tactics that are frivolous.”
16. To my understanding, the *Vexatious Proceedings Act* was enacted to safeguard the courts from vexatious and frivolous law suits without denying any person the right to access justice and to have any dispute that can be resolved by the application decided in a fair and public hearing before a court or if appropriate, another independent and impartial tribunal or body as guaranteed under Article 50 (1) of *the Constitution*.
17. In order to safeguard the right to a fair hearing, the lawmakers deemed it fit to confine the right to make an application to declare one a vexatious litigant, to the Attorney General. The Act is expressly clear on who has the power to make an application to the court.
18. Based on the above reasons, I find that prayer (1) of the plaint offends the provisions of Section 2 (1) of the *Vexatious Proceedings Act* and therefore strike out the said prayer.
19. For the reasons that the issues raised in the plaint are said to have been resolved, I shall make no order as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 5TH DAY OF MARCH 2025.

A. C. BETT

JUDGE

In the presence of:

No appearance for Plaintiff

Mr. Munzala for 1st Defendant

Ms. Songok for 2nd Defendant

No appearance for Interested Party

Court Assistant: Polycap

