



REPUBLIC OF KENYA



**Muhia & 9 others v East African Breweries Limited (Commercial Suit E185 of 2024)  
[2025] KEHC 4491 (KLR) (Commercial and Tax) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4491 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL SUIT E185 OF 2024**

**BM MUSYOKI, J**

**APRIL 8, 2025**

**BETWEEN**

**ALEX MWANIA MUHIA ..... 1<sup>ST</sup> PLAINTIFF  
ANTHONY MWENDA KATHENYA ..... 2<sup>ND</sup> PLAINTIFF  
CHARLES MBUVI MWAKA ..... 3<sup>RD</sup> PLAINTIFF  
FIONA ASHLEY KATULU ..... 4<sup>TH</sup> PLAINTIFF  
GEOFFREY MUTUNGA KIEMA ..... 5<sup>TH</sup> PLAINTIFF  
GEDION NGUMBAU SUKANO ..... 6<sup>TH</sup> PLAINTIFF  
IRENE NTHOKI WAMBUA ..... 7<sup>TH</sup> PLAINTIFF  
LUCY WANJIKU NJOROGE ..... 8<sup>TH</sup> PLAINTIFF  
MOSES MUSYOKI KIEMA ..... 9<sup>TH</sup> PLAINTIFF  
NORRAH MUTONO NDONYE ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**EAST AFRICAN BREWERIES LIMITED ..... RESPONDENT**

**RULING**

1. By a notice of motion dated 23<sup>rd</sup> July 2024, the defendant has asked this court to strike out the plaint with costs for reason that it does not disclose any reasonable cause of action. As expected under dictate of Order 2 Rule 15(1)(a) of the Civil Procedure Rules, the application was not accompanied by a supporting affidavit. The plaintiffs have responded to the application through an affidavit of the 9<sup>th</sup>



plaintiff sworn on 7<sup>th</sup> October 2024. The defendant filed submissions dated 17<sup>th</sup> February 2025 while the plaintiff chose to rely on their replying affidavit without filing any submissions.

2. For the court to strike out a plaint for disclosing no reasonable cause of action, the defendant must convince the it that the same is so hopeless that it cannot stand even with evidence being adduced and it cannot be cured by way of amendment. It must be a pleading that does not identify any violation of any rights of the plaintiff. The pleaded facts must be off the mark that they do not relate to a known identifiable claim against the defendant. In *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* (1980) KECA 3 (KLR) the Court of Appeal held that;

‘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.’

3. In *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* (2000) eKLR, the Court of Appeal explained the parameters of the court’s exercise of power to strike out a plaint for disclosing no reasonable cause of action thus;

‘On an application to strike out a plaint under order VI rule 13(1) (a) of the Civil Procedure Rules (the Rules) on the ground that it discloses no reasonable cause of action (which the present case is not) the truth of the allegations contained in the plaint is assumed and evidence to the contrary is inadmissible (see order VI rule 13(2) of the Rules). This is because the Court is invited to strike out the claim in limine on the ground that it is bound to fail even if all such allegations are proved. In such a case the court’s function is limited to a scrutiny of the plaint. It tests the particulars which have been given of each averment to see whether they support it, and it examines the averments to see whether they are sufficient to establish the cause of action. It is not the Court’s function to examine the evidence to see whether the plaintiff can prove his case, or to assess its prospects of success.’

4. The plaintiffs claim that the defendant used their images to promote its products and activities without their consent. They aver that their rights under Articles 11(2)(c), 22(1), 23(1), 23(3), 28, 31, 40(5) and 33(3) of *the Constitution* were infringed by the defendant’s acts complained of. They have pleaded particulars of breach and violation of their rights. The prayers in the plaint seek declarations of that the plaintiff’s rights have been violated and compensation in form of damages. It is claimed that the defendant promoted its business at the expence of the plaintiffs which in my view is actionable.
5. The defendant submits that it has no contractual association or relationship with the plaintiffs and it is a stranger to the plaintiffs and the agent said to have conducted the plaintiffs. In my view, this is an issue for trial. By making such submissions, the defendant suggests that if that relationship existed, the plaintiff would have a legitimate claim against the defendant. It is the lack of the association that is the basis of the plaintiff’s claim in that the defendant used their images to market its products and activities.
6. Having read the plaint, I am satisfied that the plaintiff has an arguable case which should go for trial. I consequently find no merit in the application and the same is dismissed with costs to the plaintiffs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**



Ruling delivered in presence of Mr. Ken Gachuhi for the plaintiff and Miss Wangila for the defendant.

