



Narodhco (Kenya) Limited & 2 others v JS Staedtler GMBH & Co KG of the Federal Republic of Germany & 2 others (Civil Case E028 of 2023) [2025] KEHC 12086 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE E028 OF 2023**

F WANGARI, J

MAY 8, 2025

BETWEEN

**NARODHCO (KENYA) LIMITED 1ST PLAINTIFF
BHARAT NARDAS ODHAVJI 2ND PLAINTIFF
TIMOTHY NZAKA 3RD PLAINTIFF**

AND

**JS STAEDTLER GMBH & CO KG OF THE FEDERAL REPUBLIC OF
GERMANY 1ST DEFENDANT
ANTI-COUNTERFEIT AUTHORITY 2ND DEFENDANT
DIRECTOR OF PUBLIC PROSECUTIONS 3RD DEFENDANT**

RULING

1. The Notice of Motion dated 28/10/2024 by the 3rd Defendants seeks to have the 3rd Defendant struck out from the proceedings and the suit be dismissed as against the 3rd Defendant. It was stated that the pleadings do not disclose any legal claim to the extent that no cause of action lies against the 3rd Defendant. The Plaintiffs filed Grounds of opposition dated 11/11/24 stating that the application is res-judicata by virtue of the earlier application by the 2nd Defendant which was determined vide the ruling dated 2/5/2024.
2. Further, the 3rd Defendant was vested with full powers to make decisions of arrest and prosecution, hence the Plaintiff had reasonable cause of action against the 3rd Defendant.
3. The court directed that the application be disposed off by way of written submissions. The Plaintiff and the 3rd Defendants filed their rival submissions dated 9/12/2024 and 22/11/2024 respectively. The 1st and 2nd Defendants did not participate in the application. The issue for determination are;



- a. Whether the application is res-judicata.
 - b. Whether there is a cause of action against the 3rd Defendant by the Plaintiff.
4. On whether the application was res-judicata, I have perused through the application dated 11/10/2023 and the ruling dated 2/5/2024. The said application was based on grounds that the court had no jurisdiction with the matter and that there was no cause of action against the 2nd Defendant.
 5. The court found that it had jurisdiction to deal with the matter and that there were triable issues in respect to the 2nd Defendant, which could only be determined upon hearing of the suit. I do concur with the submissions by the 3rd Defendant that the application by the 2nd Defendant and the one by the 3rd Defendant were substantially different.
 6. The court found that there was a cause of action against the 2nd Defendant independent from the rest of the Defendants.
 7. Whether there was a cause of action against the 3rd Defendant was not determined. The application in issue does not therefore meet the threshold of section 7 of the *Civil Procedure Act*. (See the *Independent Electrical and Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR). I find that the application was not res-judicata.
 8. On whether there was a cause of action against the 3rd Defendant, the Plaintiff stated that the 3rd Defendant was vested with the prosecutorial powers. The powers to prosecute are vested on the Director of Public Prosecutions (See Article 157 of the *Constitution*). Even though the 3rd Defendant stated that they were not participating in the Criminal Proceedings in the lower court, I make reference to the Plaintiffs documents, specifically document No. 16 in page 37, in the list of documents dated 28/3/2023.
 9. It's a letter from the Investigation Officer with the 2nd Defendant, addressed to the Prosecuting Counsel Court 14, dated 29/5/2015. It is only during the hearing of the suit that the role of the 3rd Defendant will be clear as far as the Criminal Proceedings giving rise to this suit are concerned. I find that the application dated 28/10/2024 is preventive and is hereby dismissed. Costs of the application to follow the outcome of the suit.

F. WANGARI – JUDGE

8/5/2025

Court;

Ruling signed and delivered in the presence of Kuyo Advocate for the 1st Defendant. Kimei Advocate for 3rd Defendant, Manwa Advocate holding brief for Adere Advocate for 2nd Defendant, No appearance by Plaintiff and Norah Court Assistant this 8/5/2025.

F. WANGARI – JUDGE

Court;

Case Management Conference (CMC) on 18/6/2025. Notice to issue to Plaintiff via 3rd Defendant.

F. WANGARI – JUDGE

8/5/2025

