



**Maina & 4 others v Republic & 2 others (Civil Case E163 of 2023)
[2025] KEHC 11836 (KLR) (Civ) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E163 OF 2023**

SN MUTUKU, J

JUNE 4, 2025

BETWEEN

**MURITHI MAINA 1ST PLAINTIFF
MOSES KARINGA 2ND PLAINTIFF
LITUNYA ALUSHULA 3RD PLAINTIFF
GEORGE ODODA 4TH PLAINTIFF
ISAACK OPONDO MUNAYI 5TH PLAINTIFF**

AND

**THE REPUBLIC 1ST DEFENDANT
KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME 2ND
DEFENDANT
DIRECTORATE OF PUBLIC PROSECUTION 3RD DEFENDANT**

RULING

The Notice of Motion

1. Kenya Railways Staff Retirement Benefits Scheme (hereafter the Applicant) has taken out the Notice of Motion dated 11th November 2024 (hereafter the Motion) brought under Sections 1B, 3 and 3A of the *Civil Procedure Act* (CPA); Order 2 Rules 15 and 16, Order 3 Rule 2, Order 4 Rules 1, 4, 5 and 6, and Order 51 of the *Civil Procedure Rules* (CPR), seeking dismissal with costs of the Plaint dated 4th September 2023 filed by Murithi Maina, Moses Karinga, Litunya Alushula, George Ododa and Isaack Opondo Munayi (hereafter the 1st, 2nd, 3rd, 4th and 5th Plaintiffs).



2. The Motion is premised on the grounds stated on the face of it and in the Supporting Affidavit of the Applicant's Chief Executive Officer, Isaac Sila who has deposed that the present suit commenced by the Plaintiffs is incompetent and a non-starter for the reason that the pleadings contained therein do not disclose a discernible cause of action thereby making it difficult and impossible for the Applicant to effectively respond to.
3. The deponent has averred that the Plaintiff on record fails to adhere to the laid down rules and procedures for filing pleadings and that the 5th Plaintiff cannot purport to act on behalf of the remaining Plaintiffs in the matter, in the absence of any valid authority to that effect and that in the circumstances, the Plaintiff cannot be sustained in its current state.
4. From the record, parties to this suit attended court on 27th February 2025. The 5th Plaintiff stated that the Plaintiffs would be putting in a response to the Motion. The court granted him an extension of time for compliance. However, at the time of writing this ruling, no response had been availed by or on behalf of the Plaintiffs, for this court's reference.
5. On their part, the Republic (hereafter the 1st Defendant) and Directorate of Public Prosecution (hereafter the 3rd Defendant) through their respective counsels, indicated that they would not be opposing the instant Motion.

Oral Submissions

6. Directions were issued by this court on 20th March 2025 that the Motion be canvassed by way of oral arguments on 12th May 2025. However, on the said date, only the Applicant's counsel attended court. This court considered that the hearing date was fixed in the presence of the 5th Plaintiff. The record of the court showed that the 1st and 3rd Defendants had been served with a hearing notice. They had, through their counsel, indicated that they would not be opposing the Motion. In the circumstances, the court allowed the Applicant to prosecute its Motion ex parte.
7. Mr. Olieti, counsel for the Applicants, relied on the grounds set out in the Motion and the Supporting Affidavit and submitted that the Plaintiff herein offends Order 3, Rule 2 of the [CPR](#) which provides that a plaint must be accompanied by a verifying affidavit. That the 5th Plaintiff has purportedly brought the present suit on behalf of the other plaintiffs but in the absence of the appropriate authority to act, in total contravention of Order 4, Rule 1 of the [CPR](#) which is couched in mandatory terms.
8. It was submitted that the plaint as is, makes it extremely difficult to discern the cause of action brought against the Applicant and hence if the Plaintiffs are allowed to proceed with the current state of their pleadings, the Applicant stands to suffer prejudice to a fair trial. That, no cause of action in the plaint relates to the Applicant. It is on the premise of the foregoing arguments that the court has been urged to allow the Motion as prayed.

Analysis and Determination

9. I have considered the Motion and the grounds advanced in support of it. As stated above, there is no Replying Affidavit or any other averments in opposition to the Motion. The Motion seeks striking out and dismissal of the Plaintiff filed in the present suit and dated 4th September 2023.
10. Striking out of proceedings is provided under Order 2, Rule 15(1) of the [CPR](#) as follows:

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—



- (a) it discloses no reasonable cause of action or defence in law; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

11. It is trite that the decision whether or not to strike out pleadings is discretionary. This discretion of the court must be exercised judicially and only in instances where it is plainly obvious that the concerned pleadings meet the threshold set out under Order 2, Rule 15(1) *CPR*. This position was echoed in *Co-Operative Merchant Bank Ltd v George Fredrick Wekesa* (Civil Appeal No. 54 of 1999) where the Court of Appeal stated thus:

“...Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action or which is otherwise an abuse of the process of the court.”

12. Further, in *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* [2000] eKLR the Court of Appeal expressed itself in the following manner on the same subject:

“A Plaintiffs is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the Plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial....It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved.”

13. Likewise, in *D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, Madan JA, stated 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.”

14. As earlier mentioned, the grounds upon which the instant Motion rides are that the Plaintiffs’ suit offends the mandatory provisions of Order 3, Rule 2 and Order 4, Rule 1 of the *CPR*; namely that the plaint has not been accompanied by a verifying affidavit and that the suit has been brought by the 5th Plaintiff on his behalf and on behalf of his counterparts but in the absence of the requisite authority to so act. Additionally, the Applicant has faulted the Plaintiffs for filing a plaint which does not disclose a clear and discernible cause of action especially as against it.



15. Beginning with the question whether the plaint offends the relevant provisions of the [CPR](#), Order 3, Rule 2 (*supra*) provides that:

“All suits filed under rule 1(1) including suits against the government, except small claims, shall be accompanied by-

- (a) the affidavit referred to under Order 4 rule1(2);
- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses excluding expert witnesses; and
- (d) copies of documents to be relied on at the trial including a demand letter before action:
...”

16. Order 4, Rule1 [CPR](#) provides that:

“(1) The plaint shall contain the following particulars-

- (a) the name of the court in which the suit is brought;
 - (b) the name, description and place of residence of the plaintiff, and an address for service;
 - (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
 - (d) the place where the cause of action arose;
 - (e) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect; and
 - (f) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff named in the plaint.
- (2) The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in rule 1(1)(f) above.
- (3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others.”(emphasis mine).

17. Upon a perusal of the pleadings on record, it is the court’s observation that the Plaint in this instance is accompanied by a Supporting Affidavit sworn by the 5th Plaintiff rather than a Verifying Affidavit as stipulated under the above-referenced Rules. The Supporting Affidavit, as deposed, does not meet the threshold provided under Order 4 Rule 1 (1) (f) of the [CPR](#) as provided under Order 4 Rule 1 (2) [CPR](#).

18. My reading of the record of the court shows that the verifying affidavit contemplated under Order 4 Rule 1 (2) [CPR](#) is meant to verify the correctness of the averments contained in Order 4 Rule 1 (1) (f) that “that there is no other suit pending, and that there have been no previous proceedings, in any



court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff named in the plaint.”

19. Further, while it is purported that the 1st to 4th Plaintiffs gave authority to the 5th Plaintiff to act on their behalf in the suit, the authority to plead which is annexed to the pleadings appears to have been signed against the names of the 1st and 3rd Plaintiffs, but does not bear any signatures against the names of the 2nd and 4th Plaintiffs. As it stands therefore, no credible material has been tendered to support the position that the 5th Plaintiff has the requisite authority to act and file any documents on behalf of the 2nd and 4th Plaintiffs in this matter.
20. I have read the Plaint in respect of the issue whether it discloses a reasonable or discernible cause of action against the Applicant. I have noted that the claim set out therein is related to alleged wrongful and malicious arrest and prosecution, and an alleged breach of the Plaintiffs’ fundamental constitutional rights and freedoms resulting from the alleged malicious prosecution. The exact cause of action as relates to the Applicant has not been clearly brought out and cannot therefore be easily discerned from the pleadings.
21. Consequently, after careful consideration of the Plaint, the Motion and the applicable provisions of the law, I am satisfied that the Applicant has reasonably demonstrated the manner in which the pleadings fail to disclose a reasonable cause of action, if any, against it. After taking into account all the foregoing factors and circumstances, it is my finding that the Plaint dated 4th September 2023 is incompetent and unsustainable. It is my finding, and I so hold, that the Motion dated 11th November 2024 succeeds on merit and therefore the Plaint dated 4th September 2023 is hereby struck out with costs to the Applicant.
22. It is so ordered.

DATED, SIGNED AND DELIVERED ON 4TH JUNE 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Olieti for the 2nd Defendant/Applicant

No attendance by the other parties

