



**Acima Consult Limited v Kenya Railways Corporation (Civil Suit E504 of 2024)
[2025] KEHC 10226 (KLR) (Commercial and Tax) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E504 OF 2024
BK NJOROGE, J
JULY 17, 2025**

BETWEEN

ACIMA CONSULT LIMITED PLAINTIFF

AND

KENYA RAILWAYS CORPORATION DEFENDANT

RULING

1. The Applicant (Plaintiff) filed the Notice of Motion dated 4th November 2024 seeking the following orders;
 - a. The Defence herein be struck out.
 - b. Judgment be entered for the plaintiff against the defendant as prayed for in the Plaintiff.
 - c. Costs of this application be provided for.
2. The Application was supported by the Affidavit of Vincent Kyaka who averred that the Defence by the defendant is scandalous, frivolous and or vexatious and is intended to delay the fair and expeditious trial and disposal of the suit.
3. As structured and pleaded, the defence is an abuse of the court process as the Defendant is truly and justly indebted to the plaintiff on account of work and professional services rendered. Therefore, the defence does not raise any single bona fide triable issue.
4. In response, the Respondent filed the Replying Affidavit sworn on 1st April 2025 and stated that it noted gaps in the Plaintiff's Valuation Reports hence the final values stated therein cannot properly form the Plaintiff's basis for calculating its professional valuation fees.
5. The Court has considered the respective submissions filed by the parties. The issue for determination is;



- a) Whether the defence ought to be struck out.

Analysis

6. The Striking out of pleadings is provided for under the provisions of Order 2 Rule 15 (1) of the Civil Procedure Rules, which states that -

15. Striking out pleadings [Order 2, rule 15.]

- (1) 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.
- (2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made. It was the Plaintiff's submission that the defence does not raise any bona fide triable issue. The defence by the Defendant is a sham, scandalous and vexatious, intended to delay the fair trial of this suit.

a) Whether the defence ought to be struck out.

7. The Defendant in defence submitted that the Statement of Defence raises several weighty questions that warrant this court's interrogation at full trial as follows: -

- a) Whether the Plaintiff's Valuation Reports were professionally sound and prepared with reasonable skill and diligence.
- b) Whether the Defendant can be bound to pay fees allegedly based on inflated and/or unsupported valuation figures.
- c) Whether the Plaintiff breached its duty of care in rendering professional valuation services intended for use in court.

8. A triable issue was defined in the case of *Job Kilach vs Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono* (2015) eKLR where the Court observed that;

“A bona fide triable issue is any matter raised by the defendant that would require further interrogation by the court during a full trial. The Black's Law Dictionary defines the term “triable” as, “subject or liable to judicial examination and trial”. It therefore does not need to be an issue that would succeed, but just one that warrants further intervention by the Court.”

9. The Court has perused the defence and at paragraphs 12 – 20 the Defendant disputes the final values upon which the Plaintiff calculated its professional fees. While the Defendant admitted the averments in other paragraphs; the issue of computation of the values upon which the professional fees were based is an issue that is triable. The Defendant stated that it delayed in paying the Plaintiff due to the issues



raised in the mentioned paragraphs. Therefore, the issues raised by the Defendant in its defence are issue best addressed in the trial.

10. It is trite law that a defence can only be struck out in the clearest of cases. This is a case where the defence looks hopeless and no life can be breathed into it. Further that Courts of law should endeavour to sustain suits rather than striking them out. The Court of Appeal in the case of Blue Shield Insurance Company Ltd vs. Joseph Mboya Oguttu [2009] eKLR established that striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. Similarly, in the case of Crescent Construction Co. Ltd Vs Delphis Bank Ltd (2007) eKLR the same Court stated thus: -

“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rules of natural justice require that the court must not drive away any litigant however weak his case may be from the seat of justice. This is a time-honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non-starter.”

11. The upshot of the above is that the only way the Court can establish the veracity of those assertions raised by the Defendant is by taking evidence at the main trial. It would be unfair in the circumstances of this case to strike out the Defence.
12. The Court therefore finds no merit in the Application and it is hereby dismissed.

Determination

13. The Plaintiff's Notice of Motion dated 4th November, 2025 is hereby dismissed as it lacks merits.
14. The Respondent to have the costs of the Application.
15. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 17TH DAY OF JULY 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Muluvi holding brief for Mr. Eric Mutua SC for the Applicant.

Miss Koske for the Respondent.

Mr. Luyai – Court Assistant

