



**Odhiambo & another v KCB Bank Kenya Limited & another (Civil Case E482 of 2024)
[2025] KEHC 12726 (KLR) (Commercial and Tax) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E482 OF 2024
AA VISRAM, J
SEPTEMBER 17, 2025**

BETWEEN

**BRIGIT MAUA ODHIAMBO 1ST PLAINTIFF
JOHN BILLY KURIA 2ND PLAINTIFF**

AND

**KCB BANK KENYA LIMITED 1ST DEFENDANT
ERNEST KYALO SIMBII T/A NOREN AUCTIONEERS 2ND DEFENDANT**

RULING

1. Before this Court is the Applicant's Notice of Motion dated 10th March, 2025, brought under Order 2, rule 15(1)(b) and (d) of the Civil Procedure Rules, seeking to strike out the Plaint dated 16th August, 2024, together with all annexures. The grounds relied upon are set out in the Application, the supporting affidavit of Francis Komen, and the Applicant's written submissions.
2. The core of the Applicant's case is that the Plaintiffs have misrepresented material facts by pleading that they are spouses and that the suit property, Title No. Sigona/502, is matrimonial property, whereas the 2nd Respondent expressly swore an affidavit of marital status on 21st April, 2022, declaring that he was single, and no evidence of a valid marriage has been placed before this Court.
3. The Respondent did not file a response or any opposition to the Application. However, on the day scheduled for hearing of the matter, Counsel for the Plaintiff contended that the reason he had not done so was because the Court had issued directions only in relation to timelines and dates for filing of and highlighting of submissions. In short, he claimed that the reason he did not file a reply was because the Court had not directed him to do so, when it issued dates for highlighting. The Court declines to accept this explanation.



4. An Advocate does not require directions from the Court to file a reply or to oppose an Application. The Civil Procedure Rules at Order 51, rule 14 provides expressly for the procedure to be followed, and further provides that in the event of failure to file the applicable documentation, the Application may be heard ex parte. Issuing directions for highlighting and allocating a date for highlighting does not absolve an Advocate of his duty to ensure that he has carried out his duty and represented his client in accordance with the procedure laid out in the Civil Procedure Rules and the applicable law.
5. Based on the record, the Respondent was duly served with the present Application over six months ago. It admitted to having been served and it failed to respond. An affidavit of service is also available in the court record to that effect. The court accordingly proceeded to determine the Application as unopposed.

Issue for determination

6. The sole issue for determination is whether the Plaint dated 16th August, 2024, ought to be struck out on the basis that the same is frivolous, vexatious, and an abuse of the Court's process?

Analysis and Determination

7. Order 2, rule 15(1) of the Civil Procedure Rules empowers the Court at any stage of proceedings to strike out pleadings that are frivolous, vexatious, or an abuse of process.
8. The Plaintiffs in paragraphs 4, 5, and 6 of the Plaint aver that they are spouses and that the suit property constitutes matrimonial property. The verifying affidavit sworn by the 1st Plaintiff on 16th August, 2024, endorsed these averments as true.
9. However, the evidence on record demonstrates otherwise. The 2nd Plaintiff executed an affidavit of marital status stating categorically that he was single and had never been married. Evidence of the same is found at Exhibit FK 3 of the Applicants supporting affidavit. This has not been denied or controverted by the Respondent. This affidavit was relied upon by the bank in granting the loan facility and registering the charge over the suit property.
10. The only evidence of alleged marriage tendered by the Plaintiffs is a copy of a birth certificate of their child. This, in law, is not proof of a marital relationship. Section 6 and 7 of the [Matrimonial Property Act](#) make clear that only spouses may claim matrimonial property, and proof of marriage must be by recognised evidence such as a certificate of marriage. None has been produced before this Court.
11. The jurisprudence of our superior courts is settled. In *Crescent Construction Co. Ltd v Delphis Bank Ltd* (2007) eKLR, the Court of Appeal held that it is unfair to drag a party to court where the suit is a non-starter. Similarly, in *Blue Shield Insurance Co. Ltd v Joseph Mboya Oguttu* [2009] eKLR, the Court reaffirmed that striking out pleadings is drastic but justified where pleadings are a sham.
12. The present Plaint is premised on allegations that are contradicted by the Plaintiffs' own sworn statements and documents. The inconsistencies go to the root of the cause of action and are fatal. Uncontroverted, and in the absence of any explanation whatsoever, this Court finds that the Plaintiff does not have a leg to stand on.
13. Based on the reasons set out above, I find that the Plaintiffs' misrepresentation of marital status and the classification of the suit property as matrimonial amounts to an abuse of the process of the Court and deliberate attempt to mislead the Court. I am satisfied that the Plaint dated 16th August, 2024, is frivolous, vexatious, and an abuse of the process of the Court.



Disposition

14. The Notice of Motion dated 10th March, 2025, is hereby allowed. The orders of this Court are as follows:-
- a. The Complaint dated 16th August, 2024, is hereby struck out.
 - b. Any injunctive orders issued and subsisting at this time are hereby discharged.
 - c. Costs of the Application and of the suit are awarded to the Applicant.
 - d. The file is marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 17TH DAY OF SEPTEMBER, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lisper

.....for 1st Plaintiff/1st Respondent

....for 2nd Plaintiff/ 2nd Respondent

.....for 1st Defendant/Applicant

...for 2nd Defendant/3rd Respondent

