



**Njunge v Ministry of Interior & Coordination of National Government & 3 others
(Civil Suit 7 of 2019) [2024] KEHC 4676 (KLR) (Civ) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4676 (KLR)

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

CIVIL

CIVIL SUIT 7 OF 2019

CW MEOLI, J

APRIL 16, 2024

BETWEEN

JOSEPH GATHU NJUNGE PLAINTIFF

AND

**MINISTRY OF INTERIOR & COORDINATION OF NATIONAL
GOVERNMENT 1ST DEFENDANT**

MINISTRY OF EDUCATION, SCIENCE & TECHNOLOGY 2ND DEFENDANT

NATIONAL COUNCIL OF CHURCHES OF KENYA 3RD DEFENDANT

KENYA CONFERENCE OF CATHOLIC BISHOPS 4TH DEFENDANT

RULING

1. Joseph Gathu Njunge (hereafter the Plaintiff) brought the Notice of Motion dated 23rd May, 2023 (the Motion) supported by the grounds laid out on its face and the facts stated in his affidavit, seeking the review and setting aside of the order made by the court on 9th May, 2023 directing that his suit be transferred to the Chief Magistrate's Court for hearing and determination; and consequently, an order retransferring the suit to the High Court.
2. The grounds to the Motion in sum argued that there is an error apparent on the face of the record since the suit was (purportedly) transferred by the court to the Chief Magistrate's Court without notification to the Plaintiff.
3. In his supporting affidavit, the Plaintiff stated that the present dispute concerns itself inter alia, with the spiritual persecution of both himself and certain cited members of his family. The Plaintiff further stated that Kenya Conference of Catholic Bishops (hereafter the 4th Defendant) played an active role in spreading evil spirits among various communities. The Plaintiff also referred to allegations



of discrimination on the part of Ministry of Education, Science & Technology (hereafter the 2nd Defendant) as well as an infringement of his constitutional rights and those of his family, in view of the above.

4. National Council of Churches of Kenya (hereafter the 3rd Defendant) opposed the Motion by filing the Grounds of Opposition dated 1st December, 2023. Although it was noted from the record that the batch in respect of the Grounds was not paid for by counsel for the 3rd Defendant, the following grounds were raised:

1. That the application offends Rule 9 of the Oaths and Statutory Declaration Rules as there are no exhibits attached to the supporting affidavit.
2. That specifically, Rule 9 of the Oaths and Statutory Declaration Rules states that All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification. The Plaintiff has not attached any exhibits in his affidavit and therefore offends this Rule. Furthermore, the Supreme Court in the case of Odinga & 16 others v Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated)) [2022] KESC 54 (KLR) (Election Petitions) (5 September 2022) (Judgment) stated that “though it is elementary learning, it bears repeating that affidavits filed in court must deal only with facts which a deponent can prove of his own knowledge.” The Plaintiff has neither stated facts nor has he endeavoured to prove his averments in the said affidavit, therefore the said application ought to be struck out.
3. That the application discloses no reasonable cause of action or defence in law. In *DT Dobie & Co. (Kenya) Limited v Muchina & Another* [1982] KLR, the Court of Appeal defined reasonable cause of action to mean “an action with some chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer...” The court went further to define what constitutes a cause of action and held that a cause of action referred to an act on the part of the defendant which gave the plaintiff a cause of complaint. Up to this point the plaintiff has failed to disclose a reasonable cause of action which would enable him to seek a legal remedy against the 3rd Defendant. It is on this basis that we humbly invite the court to strike out the Plaintiff’s application.
4. That pursuant to Order 2 Rule 15(1) of the Civil Procedure Rules the Court may at any stage of the proceedings order to be struck out any pleading on the ground that it discloses no reasonable cause of action or defence in law.
5. That in the case of *Karl Wehner Claasen v Commissioner of Lands & 4 others* [2019] eKLR the Court further defined a cause of action as follows:

A cause of action denotes a combination of facts which entitles a person to obtain a remedy in court from another person and includes a right of a person violated or threatened violation of such right by another person. The applicant did not disclose any such fact which is sufficient ground for the Court to strike out the application.

6. That the said application is misconceived, incompetent, lacks merit, frivolous and vexatious and is an abuse of the court process of this Honourable Court.

Reasons Wherefore the 3rd Defendant prays that the Plaintiff’s Application dated 23rd May 2023 be struck out with costs. sic



5. The Motion was canvassed through brief oral arguments. On his part, the Plaintiff argued that the suit constitutes a spiritual matter regarding violation of Article 32 of *the Constitution* and therefore urged the court to grant the orders sought on that basis. Miss Kagendo, counsel for the 3rd Defendant, in response, reiterated the Grounds of Opposition to the effect that no cause of action exists here and hence the Motion ought to be struck out.
6. The court noted that the remaining Defendants herein did not participate at the hearing of the Motion or file any documentation in that respect.
7. Be that as it may, the court has considered the affidavit material supporting the Motion; the Grounds of Opposition and the rival oral arguments. It is clear that the orders sought in the instant Motion are for the review of the order made by the court on 9th May, 2023 directing that the suit be transferred to the Chief Magistrate’s Court for hearing and determination, paving way for the retransfer of the suit to the High Court.
8. The germane principles to guide this court in deciding whether to review the abovementioned order are found under Order 45 of the CPR and reaffirmed under Section 80 of the *Civil Procedure Act* Cap. 21 Laws of Kenya and set out in the manner below:

“ Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

9. The following are the instances in which a court can review a decision already in place:
 - a. the discovery of new and important matter or evidence, or
 - b. some mistake or error apparent on the face of the record, or
 - c. any other sufficient reason.
10. From the court’s study of the Motion and supporting documents, it is clear that the Motion rides on the principle of ‘error apparent on the face of the record.’ In that regard, reference is made to the case of *Muyodi v Industrial and Commercial Development Corporation & Anor* [2006] 1 EA 243 where the Court of Appeal rendered itself in the following manner:

“In *Nyamogo and Nyamogo v Kogo* [2001] EA 174 this court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent



on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

11. From the foregoing, it is clear that an error apparent on the face of the record must be a self-evident error which need not require elaborate arguments to support it.
12. From a perusal of the contents of the Motion, the court did not come across any elaborate explanation by the Plaintiff to indicate any error apparent on the face of the record, warranting a review of the aforementioned order, as sought in the Motion.
13. That said, the court was further faced with the pertinent issue which was raised by the 3rd Defendant, regarding whether a cause of action exists at all in the subject suit.
14. In answering the question: “what is considered to be a cause of action?” the court borrows from the decision in *Anne Jepkemboi Ngeny v Joseph Tireito & another* [2021]eKLR where the Court of Appeal succinctly stated the following:

“In the Court of Appeal case of *Attorney General & another v Andrew Maina Githinji & Another* [2016] eKLR Waki JA. held that,

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of *Drummond Jackson vs Britain Medical Association* (1970) 2 WLR 688 at pg 616. In an earlier case, *Read vs Brown* (1889), 22 QBD 128, Lord Esher, M.R. had defined it as: -

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court.”

Lord Diplock, for his part in *Letang vs Cooper* [1964] 2 All ER 929 at 934 rendered the following definition: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.””

15. As earlier set out, the Plaintiff on his part averred that the dispute touches on spiritual matters -cum-constitutional rights. However, upon considering the pleadings, the court was unable to discern from the pleadings as well as the Motion, what the precise nature of the cause of action being brought forth by the Plaintiff herein is. The pleadings are replete with alleged facts and provisions relating to spirituality and other indeterminate matters but no clear cause of action can be discerned. Certainly, there was no tangible constitutional issue pleaded with any amount of particularity.
16. In the court’s view, if at all a cause of action exists in the matter, the same has not been clearly articulated and/or brought out by the Plaintiff to justify invocation of the jurisdiction of this Court. Suffice it to say that, the Plaintiff is at liberty to move the appropriate court appropriately, in pursuit of his perceived claims, but upon seeking proper legal advice.



17. The upshot therefore is that the Notice of Motion dated 23rd May, 2023 is hereby dismissed for want of merit. In the circumstances, each party shall bear its own costs of the Motion.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 16TH DAY
OF APRIL 2024.**

C.MEOLI

JUDGE

In the presence of:

For the Applicant: N/A

For the 3rd Respondent: Ms. Kagendo h/b for Mr. Gitonga C/A: Erick

