



Scania Finance Southern Africa (PTY) Limited & another v Sturt Transporters Limited & 2 others (Commercial Case 227 of 2018) [2024] KEHC 8734 (KLR) (Commercial and Tax) (11 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 227 OF 2018
MN MWANGI, J
JULY 11, 2024**

BETWEEN

SCANIA FINANCE SOUTHERN AFRICA (PTY) LIMITED 1ST PLAINTIFF

SCANIA CREDIT SOLUTIONS LIMITED 2ND PLAINTIFF

AND

STURT TRANSPORTERS LIMITED 1ST DEFENDANT

BENAON NDERI IRIGA 2ND DEFENDANT

ANNA WANGUI KAMAU 3RD DEFENDANT

RULING

1. There is no formal application before this Court. What transpired is that on 28th July, 2022 when this case came up for defence hearing before Judge A. Mshila, Ms Muyaa who was holding brief for Mr. Rimui for the defendants urged the Court to expunge a further list of documents that had been filed by the plaintiffs.
2. Mr. Oyoo responded by saying that they had on 19th July, 2022 filed a further list of documents containing the 1st defendant's Board Resolution dated 29th March, 2016, without leave of the Court.
3. Later on, Mr. Rimui attended Court and stated that they were objecting to the supplementary list of documents being produced by the plaintiffs as the plaintiffs had duly closed their case, and the defendants' witness had testified in examination-in-chief. Counsel contended that the purported filing and production of the said document would be prejudicial to the defendants.



4. Mr. Rimui further stated that the said document could not be produced by the plaintiffs who had closed their case, and by placing the document before the Court at that stage and intending to cross-examine the defendants' witness on the contents of the same would have the effect of the plaintiffs producing evidence on the said documents in a sneaky way. He contended that the defendants would not have the opportunity to challenge the document, and that no leave of the Court was sought before filing the said document
5. He pointed out that this case was filed in the year 2018 but no good reasons or grounds had been given to explain why the document was never produced. He stated that the effect of its production at his stage would be to fill gaps in the plaintiffs' case as cross-examination would be done on issues of the said document and not newly discovered evidence. Counsel relied on the case of *Jacqueline Ngunyo Deje v Board of Directors KCA University* [2019] eKLR, where the Court proceeded to expunge documents filed after the claimant had fully testified.
6. Mr. Rimui stated that it was the duty of the plaintiffs to put their best foot forward and urged this Court to expunge the document filed by the plaintiffs without looking at it, as the late filing of the same was prejudicial to the defendants. He submitted that Rules are made for the purpose of having an even playing field for the parties.
7. Mr. Oyoo stated that as Officers of the Court, they have a duty to help the court in upholding administration of justice by placing all the information before it and that is the reason why the plaintiffs filed the document. He explained that the document was the 1st defendant's Board of Directors' resolution, which the defendant conveniently failed to file. He stated that although the plaintiff closed its case, a party's own document cannot prejudice the said party.

DETERMINATION

8. I have considered the oral objection made by the defendants' Counsel on the filing of additional documents by the plaintiffs after close of the pleadings and after closure of the plaintiffs' case. Although the plaintiffs' Counsel contended that the document filed was the defendant's Board Resolution, in my considered view, filing of the said document without leave of the Court being granted and without the filing of a formal application is tantamount to taking this Court for granted.
9. The plaintiffs were duty bound to explain by way of affidavit evidence the reasons as to why they failed to file the impugned document before close of pleadings or before the plaintiffs closed their case. The issue of whether or not an additional document can be filed this late in the proceedings is a matter that rests on the exercise of this Court's discretion, which discretion must be exercised judiciously.
10. The *Black's Law Dictionary (Tenth Edition)* defines judicial discretion as -

“The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right.”
11. In the case of *Coast Water Services Board v Rehema Charo Kabindi & Kache Chare Mramba (Legal Representatives of the Estate of Fredrick Charo Kadenge (Deceased) & another* [2020] eKLR, the Court relied on SA Desmith and J M Evans *Judicial Review of Administrative Action* 4th Edition [1980] 278 definition of judicial discretion as follows-

“.....is the legal concept of discretion which implies power to make a choice between alternative courses of action. If only one course can lawfully be adopted, the decision taken



is not the exercise of a discretion but the performance of a duty. To say that somebody has a discretion presupposes that there is no uniquely right answer to his problem.”

12. Considering the stage at which these proceedings have reached and the fact that the plaintiffs were represented by Counsel, the plaintiffs should have made an application to rely on additional documents before closure of their case. It is my finding that it would be prejudicial to the defendants if this Court was to allow the plaintiffs to rely on the said documents so belatedly. In the circumstances, I decline to exercise my discretion in favour of the plaintiffs. The objection raised by the defendants’ Counsel is hereby sustained. Costs are awarded to the defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF JULY 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Oyoo for the plaintiffs

Mr. Munene for the defendants

Ms B. Wokabi – Court Assistant.

