



REPUBLIC OF KENYA



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**A Plan Insurance Limited v Sanlam General Insurance Ltd (Civil Case E315 of 2023)
[2024] KEHC 11791 (KLR) (Commercial and Tax) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11791 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E315 OF 2023
FG MUGAMBI, J
OCTOBER 4, 2024**

BETWEEN

A PLAN INSURANCE LIMITED PLAINTIFF

AND

SANLAM GENERAL INSURANCE LTD DEFENDANT

RULING

1. The application for consideration is the defendant's Notice of Motion dated 20/11/2023 brought under Order 2 Rule 15(1)(a)(c) and (d) of the *Civil Procedure Rules*. It seeks to strike out the plaintiff's suit for failure to disclose a reasonable cause of action against the defendant.
2. The grounds of the application are that while the claim by the plaintiff is based on breach of contract, the plaint has not sufficiently set out details of the alleged contract or the particulars of the alleged breach, so as to enable the defendant to put up a defense. The defendant denies that there is any contract entered into between the parties.
3. The application is opposed by way of a replying affidavit sworn by Samuel Nderitu a director of the plaintiff, on 17/1/2024. He contends that the grounds raised by the defendant are premature and that the plaintiff ought to be given a chance to ventilate the issues on merit.
4. He further contends that the issues for determination by the court include whether there was an implied contract between the parties based on their conduct and whether there was exchange of consideration sufficient to create a legitimate expectation of the fulfilment of a contractual obligation. Finally, that the issue of vicarious liability also falls for determination in the suit.



Analysis and determination

5. I have considered the pleadings, submissions, evidence and authorities filed by the parties in support of their cases. I am mindful of the powers conferred by Order 2 Rule 15 of the [Civil Procedure Rules](#), which allows the court to strike out pleadings in the following terms:

- “(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.”

6. The principles guiding the striking out of pleadings were set out by the Court of Appeal in [Yaya Towers Limited v Trade Bank Limited](#), (In Liquidation) CA No. 35 of 2000. The court expressed itself thus:

“A plaintiff 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.”

7. Similar reasoning was affirmed in [DT Dobie & Company \(K\) Ltd V Muchina](#), [1982] KLR 1 where the court held 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. The rationale for this is due to a realization that the exercise of the powers for summary procedure are draconian, coercive and drastic. And because a party may thereby be deprived of his right to a plenary trial, the court exercises those powers with the greatest care and circumspection and only in the clearest of cases as regards the facts and the law. The summary procedure should therefore only be adopted when it can be clearly seen that a claim or case is clear and beyond doubt unarguable and the judicial system would never permit a party to be driven from the judgment seat without any court having considered his right to be heard, except in cases where the cause of action was obviously and almost incontestably bad.”

8. I now turn to consider the facts before me against in light of these legal principles. The submissions show that the parties had a prior business engagement, which led to the current claim. This engagement concerned a tender floated by the Kenya Electricity Generation Company (KENGEN), for supply of



insurance services. The plaintiff identified the defendant as its underwriter for purposes of that tender. Both parties acknowledge the existence of the tender and that the plaintiff put in a bid for the same.

9. I have equally reviewed the plaint and I note that it sets out the chronology of events from the submission of the bid, the notification of award, acceptance of the award and subsequently the letter declining the cover by the defendant and eventual cancellation of the tender by KENGEN. While no documents have been filed with the plaint, the plaintiff's claim appears to rest on the doctrine of legitimate expectation, arising from its relationship with the defendant as underwriter and broker, as well as an implied contract by virtue of the parties' conduct.
10. Counsel for the defendant referred to the Court of Appeal's decision in *Attorney General & Another v Andrew Maina Githinji & Anor*, (2016) eKLR in which a cause of action was referred to as "an act on the part of the defendant, which gives, the plaintiff his cause of complaint".
11. From paragraphs 17 to 20 of the plaint, it is clear that the plaintiff's complaint centers on the defendant's breach of the legitimate expectation it created, which allegedly led to the plaintiff's loss of expected and future business.
12. I acknowledge that at this interlocutory stage, the court's inquiry is necessarily limited. Whether the plaintiff can substantiate their allegations is a matter for a full trial. At this juncture, however, the plaint presents critical issues that merit judicial scrutiny, particularly the existence of a contract, whether oral or written and the application of the doctrine of legitimate expectation. Striking out the suit without affording the plaintiff the opportunity to present evidence would not only preempt a proper trial on the merits but would also constitute an overly harsh exercise of judicial power. Such a decision would be contrary to the principle that summary procedures should be applied sparingly.

Disposition

13. Accordingly, the application dated 20/11/2023 is devoid of merit. The same is dismissed. The costs of the application shall await the outcome of the suit.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 4TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

