



**Kanuri Limited & 33 others v Uber Kenya Limited & 2 others (Civil Case 356 of 2016)
[2021] KEHC 138 (KLR) (Commercial and Tax) (7 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 138 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 356 OF 2016
F TUIYOTT, J
OCTOBER 7, 2021**

BETWEEN

KANURI LIMITED & 33 OTHERS PLAINTIFF

AND

UBER KENYA LIMITED RESPONDENT

AND

UBER INTERNATIONAL HOLDING BV 1ST DEFENDANT

UBER INTERNATIONAL B.V 2ND DEFENDANT

RULING

1. Uber Kenya Limited (Uber Kenya or Applicant) asks this Court to make the drastic order against the plaintiffs by having its name struck out from these proceedings and as a consequence to dismiss the suit against it. This request is made in the chamber summons dated 14th December 2020.
2. Uber Kenya asserts that, on the basis of facts set out in the further amended plaint dated 14th November 2018 and filed a day later, the plaintiffs allege to have entered into an online agreement with Uber B.V against whom there is a complaint of breach of contract. Uber Kenya states that it is a separate and distinct entity from Uber B.V. It denies any contract between it and the plaintiffs. Uber Kenya further contends that the plaintiffs do not have, and would not have, any right of relief against it.
3. In response, the lawyer for the plaintiffs swore an affidavit in which they retort that Uber Kenya is an operational arm through which all contact between them and Uber is made. For illustration, the plaintiffs displayed copies of communication between some of them and Uber Kenya.



4. The application before Court is brought under the auspices of Order 1 Rule 10(2) of the *Civil Procedure Rules* which provides:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

Striking out of pleadings is a drastic action to be taken only in clearest of cases and where pleadings so hopelessly and irredeemably fail to reveal a cause of action.

5. In this matter it is common ground that there is no privity of contract between Uber Kenya and the plaintiffs. But the plaintiffs pose an important question; is privity of contract the only consideration for joining a party to a suit.
6. In the current pleadings, the plaintiffs found their cause of action against Uber Kenya, Uber International Holding B.V and Uber International B.V on the basis of online agreements or contracts entered between them and the three. However, in responding to the application now before Court, the plaintiffs admit that the contract is between them and Uber B.V.
7. That said, the plaintiffs aver the following connection between them, Uber B. V, Uber International Holding B.V and Uber International B.V.

(2) The 1st Defendant is a limited liability company incorporated as such under the laws of Kenya and trading in various names, styles and forms including UBER B. V, UBER INTERNATIONAL HOLDING B.V and UBER INTERNATIONAL B.V which are all proxy entities of each other with their operations in and outside Kenya but for purposes of this case, the Defendant has an operating license to offer dispatch and hailing car services in Kenya through a mobile phone application platform known as Uber services for purposes providing more efficient transportation services. Service of summons shall be effected through the office of the Plaintiffs’ advocates only.”

8. Shown to this Court is an email dated 16th October 2017 from address uber.kenya@uber.com to the 1st Plaintiff in respect to fare adjustment. There is another email from the same address to the 1st plaintiff regarding a new product. Uber Kenya does not deny authorship of these emails. These emails are written on behalf of Uber B.V and in respect of the online contracts which is the subject of these proceedings.
9. It is therefore not a trifle for when the plaintiffs allege that there is a connection between Uber Kenya and Uber B.V. In their pleadings (See paragraph 20 sub-paragraph viii), the plaintiffs aver that “the Defendants (including the Uber Kenya) induced and lured them to deal in a bogus and sham online commercial engagements while acting as the clearance/approving agent of its mysterious, elusive, intangible and indescribable foreign principals posing as Uber B.V”. This is an averment that Uber Kenya is not just an agent of Uber B.V but also personally liable to the plaintiffs. And the communication authored by Uber Kenya is demonstration that the averment of an agency is neither absurd or unfounded. This Court does not therefore accept the submission by counsel for Uber Kenya that agency is not pleaded or that it can be exonerated now, without trial.



10. As I understand the law that both a named principal and his agent can be sued jointly and since there is pending application (16th December 2020) to join Uber B.V as a co-defendant, I am unable to accede to the harsh step of striking out the plaintiffs' suit against the 1st Defendant. The Chamber Summons of 14th December 2020 is hereby struck out with costs.

DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER 2021

A. MABEYA, FCI Arb

JUDGE

PRESENT:

