



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 332 OF 2007**

**STEPHEN KINYANJUI KIBUNJA T/A KIBUNJA & ASSOCIATES.....APPLICANT**

**VERSUS**

**THE COMMISSIONER OF POLICE.....1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL .....2<sup>nd</sup> DEFENDANT**

**RULING**

1. The application dated 18<sup>th</sup> September, 2007 seeks orders that

**a) That the defence filed herein be struck out.**

**b) That judgment be entered as prayed in the plaint and the matter do proceed for assessment of damages.**

**c) That the costs of this application be provided for**

2. It is stated in the affidavit in support that the Applicant was arrested and prosecuted in a criminal case over trumped up charges. That the Applicant was finally acquitted and that the defence filed herein is a sham meant to delay the trial of this suit.

3. On 13<sup>th</sup> October, 2016 when the application proceeded to hearing, no response had been filed Respondents and nor were they present. The application was heard *ex parte*.

4. A statement of defence dated 7<sup>th</sup> May, 2007 herein denies any malicious prosecution and states that an acquittal does not provide the Plaintiff with a cause of action for malicious prosecution. It is also averred that the suit herein is time barred. These are triable issues. The defence is therefore not a sham.

5. The principles of the law applicable in an application for the striking out of pleadings were well set out in the case of **D.T.Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & Another [1980] eKLR**. Although the court has an inherent jurisdiction to dismiss a case which is scandalous, frivolous, vexatious and an abuse of the court process, it's a drastic remedy which ought to be exercised sparingly only in plain and obvious cases when it is clear that the action cannot succeed or is in some way an abuse of the court process. The parties cannot be driven out of the seat of judgment unless the case is unarguable.

6. As stated by Madan, J in the case of **D.T.Dobie (supra)**:

**“A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.**

**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.”**

7. In the upshot, I find no merits in the application and dismiss the same with costs.

**Dated, signed and delivered in Nairobi this 7<sup>th</sup> day of March, 2019**

**B. THURANIRA JADEN**

**JUDGE**