



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)

COMMERCIAL AND TAX DIVISION

CIVIL CASE NO 491 OF 2016

FREDBLACK INSURANCE BROKERS LIMITED.....PLAINTIFF

VERSUS

THOMAS RUHIU KARIUKI.....1ST DEFENDANT

MICHAEL DUCKWORTH.....2ND DEFENDANT

RULING

1. The 2nd Defendant/Applicant through an application dated 13th June 2018 brought pursuant to order 2 Rule 15(1) of Civil Procedure Rules and section 3A of Civil Procedure Act prays that the suit against the 2nd Defendant/Applicant be struck out and dismissed with costs to the suit and the application. The application is premised on the grounds on the face of the application.
2. The plaintiff is opposed to the application and relies on the Replying affidavit dated 25th July 2018.
3. The 2nd Defendant/Applicant seeks the plaintiff's suit as against him be struck out as it does not disclose a reasonable cause of action against the 2nd defendant.
4. What is reasonable cause of action was well enunciated in the case of **Time Magazine International Ltd and another Vs Michael F. Rotich and another [2000] eKLR** where Onyango Otieno, J; as he then was; adopted the definition of a reasonable cause of action as meaning "*a cause of action with some chance of success.*"
5. In **Drummond Jackson Vs British Medical Association and others [1970] 1 W.L.R 688 at page 696** Lord Pearson thus defined a reasonable Cause of Action as follows:-

.....No exact paraphrase can be given, but I think "reasonable cause of action means a cause of action with some chance of success when....any of the allegation in the pleadings are considered as required by paragraph 2 of the

"If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out."

6. I have in this matter, considered the plaintiff's plaint dated 2nd December 2016; the 2nd applicant, application dated 13th June; the 2nd defendant's defence dated 13th June, 2016 the plaintiff's reply to the 2nd defendant's defence dated 25th July 2015 and replying affidavit dated 25th July 2018; and note that save the contents contained in the plaint dated 2nd December 2018 no new matters have arisen. I have also considered the counsel rival submissions.
7. From the plaint dated 2nd December 2016 save for description of the 2nd Defendant/Applicant in the body of the plaint no specific allegation has been pleaded against the 2nd Defendant/Applicant; nor is there a specific remedy sought in the plaint as against the 2nd defendant which is supported by any allegations as against the 2nd Defendant/Applicant in the body of the plaint. There is no allegation in the plaint that the 2nd Defendant/Applicant holds any shares in the plaintiff company nor is there claim of shareholder's remedy against the 2nd Defendant/Applicant. It is clear from the pleadings that the 2nd Defendant/Applicant resigned from the Directorship of the plaintiff company on 24th March 2014 as admitted by the plaintiff in its pleadings and before filing of this suit. There is no pleading showing joinder of action, between the claim against the 1st defendant and the claim against 1st and 2nd defendant.

8. I am alive to the fact that a court of justice should aim at sustaining a suit and restrain itself from terminating any suit summarily through dismissal as a law suit should be determined by giving fair hearing to all parties and enable them to give evidence where possible. However the court should also be weary of time wastage and save party from unnecessary costs. From the foregoing and having carefully considered the pleadings placed before me, I find from the way the plaint is drawn and filed the plaintiff's suit against the 2nd defendant does not disclose a reasonable cause of action as against the 2nd Defendant/Applicant. The plaintiff's claim as against the 2nd Defendant/Applicant has no chance of success and it would mere wastage of time and money to fail to struck the same at this stage.

9. The upshot is that the 2nd Defendant's/Applicant's application dated 13th June is allowed. I accordingly make the following orders:-

a) The plaintiff's suit dated 2nd December 2016 does not disclose a reasonable cause of action against the 2nd Defendant and is struck out.

b) Costs of the suit and costs of the application is awarded to the 2nd Defendant/Applicant.

Dated, signed and delivered at Nairobi this 15th day of November, 2018.

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J .A. MAKAU

JUDGE