

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 221 OF 2016

MARIKO CHEPKONGA.....1ST PLAINTIFF

JACKSON MAINA GACHANJA.....2ND PLAINTIFF

VERSUS

NATIONAL SOCIAL SECURITY FUND.....DEFENDANT

RULING

This suit was filed on 23rd August, 2016. It is related to a claim for general and special damages arising from demolition of some property which belonged to the plaintiffs. The plaintiffs blamed the defendants for the said loss. The defendant filed a statement of defence on 23rd September, 2016 denying the plaintiffs' claim.

There is now before me an application by way of Notice of Motion under Order 2 rule 15 1 (a) and (d) order 51 rule 1 of the Civil Procedure Rules, Section 3 (3) of the Law of Contract Act Cap 23, Sections 1A, 1B 3 and 3A of the Civil Procedure Act, filed on 25th May, 2018 seeking an order that the plaint dated 23rd August, 2016 be struck out for reasons that it does not disclose any reasonable cause of action against the defendant, that it may delay the fair trial and that it is otherwise an abuse of the court process. It is supported by an affidavit sworn by one Pius Sila, the Tenant Purchase Officer of the defendant. The application is opposed and there are grounds of opposition filed on behalf of the plaintiffs. Both parties have filed submissions to address the application.

The thrust of the defendant's case is that there was no contract between the plaintiffs and the defendant and therefore the plaintiffs have no legal interest capable of sustaining any suit against the defendant.

The striking out of any pleading is a drastic measure which should only be invoked in the clearest of cases. I have seen the issues drawn by the plaintiff for determination and related the same to the pleadings drawn and filed by the parties herein.

The submissions filed address matters that ideally belong to the province of a trial. If I were to strike out the plaintiffs' suit at this stage, the plaintiffs will be driven out of the seat of judgment before any hearing. However weak their case may be, they should have their day in court. In the case of **Cassam v Sachania (1982) KLR 191** at page 197, the court observed as follows,

“..Summary determinations are for plain cases, both as regards the facts and the law. An issue between the parties to an interlocutory application should not be decided at that stage unless the material facts are capable of being adequately established and the law is capable of being fully argued without the benefit of a trial.”

I am not persuaded that this is a right case for invoking the order sought by the defendant and therefore dismiss the application with costs to the plaintiffs.

I note that the only step remaining before the hearing of the suit is the certificate that the suit is ready for hearing. I have seen some directions given by the Deputy Registrar on 24th April 2018 allowing the defendant time to file witness statements which are yet to be complied with.

The time given by the Deputy Registrar having expired, and the application for striking out having been dismissed, this suit is hereby certified ready for hearing. Parties shall take a hearing date in the registry.

Dated, signed and delivered at Nairobi this 13th day of December, 2018.

A. MBOGHOLI MSAGHA

JUDGE