



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NUMBER 79 OF 2016

LAVINGTON SECURITY LIMITEDPLAINTIFF/RESPONDENT

VERSUS

NATIONAL SOCIAL SECURITY FUND.....DEFENDANT/APPLICANT

RULING

The defendant/applicant has moved the court by way of a Notice of Motion dated the 17th day of June 2016 under Sections 1A, 1B, 3A of the Civil Procedure Act and under Order 2 Rule 15 (a), and Order 51 Rule 1 of the Civil Procedure Rules Cap 21 Laws of Kenya seeking the orders that;

1. That this Honourable Court be pleased to strike out the Plaintiff's suit herein for failing to disclose any reasonable cause of action against the Defendant/Applicant.
2. That the costs of the entire Suit and this Application be borne by the Plaintiff.

The application is premised on the grounds set out on the body of the application and supported by the annexed affidavit sworn by **AUSTIN OUKO**.

The applicant seeks to strike out the plaint on the grounds that it neither disseminated nor published the contents of the letter dated 12th February, 2016 to the public or to any third party but only to the plaintiff/respondent who was the one addressed in the letter.

That the circumstances surrounding the writing of the said letter, were that on the 24th November 2015, the defendant/applicant herein advertised tender, inviting the applicant to bid for provision of security services for the defendant/applicant.

That on the 12th February 2016, the applicant informed the respondent vide a letter dated the same date that the Plaintiff's/Respondent's bid was unsuccessful after a vigorous, transparent and fair bidding process. It is the contents of that letter that prompted the plaintiff to file the case herein.

The defendants in the application herein, contends that the suit discloses no reasonable cause of action against it.

In response, the plaintiff/respondent filed a replying affidavit sworn by **PIUS K. CHELIMO** and in paragraph 5 of the same, raises a fundamental issue of law, that the application is incurably defective for the reason that under order 2 Rule 15 (1) (a) and (2) of the Civil Procedure Rule 2010, no evidence shall

be admissible on an application seeking to strike out a pleading on the basis that it discloses no reasonable cause of action save that the application shall state concisely the grounds on which it is made.

This being a point of law, I find it prudent to dispose off it first, before I can go to the merits of the application, if need be.

This court has taken the liberty to consider the provisions of order 2 rule 15 (i) (a) and (2) and it reads;

“No evidence shall be admissible on an application under sub rule (1) (a) but the application shall state concisely the grounds on which it is made”.

The court quite agrees with the plaintiff’s counsel that no evidence is admissible in the application before the court and therefore, it is in gross contravention of the said mandatory provision of the law.

In the premises aforesaid, the application dated the 17th day of June 2016, is hereby struck out with costs to the plaintiff/respondent.

Dated, signed and delivered at Nairobi this 19th day of January, 2017.

.....

LUCY NJUGUNA

JUDGE

In the Presence of

..... for the Appellant

..... for the Respondent