



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CIVIL CASE NO. 1 OF 2014

FRANCIS G. MURIITHI.....PLAINTIFF

-VERSUS-

THE ATTORNEY GENERAL.....1ST DEFENDANT

COMMUNICATIONS AUTHORITY OF KENYA.....2ND DEFENDANT/ APPLICANT

RULING

1. **COMMUNICATIONS COMMISSION OF KENYA**, the 2nd defendant and the applicant has moved this Court vide a motion dated 30th May, 2014 asking for the following reliefs:
 - i. ***That the plaint filed herein be struck out.***
 - ii. ***Costs of the suit and the application be provided.***
2. The Applicant based its Notice of Motion on the following grounds:
 - a. ***That the plaint filed is scandalous, frivolous, vexatious and is intended to prejudice and delay the trial of case.***
 - b. ***That the plaint filed is an abuse of court process.***
 - c. ***That it is in the best interests of justice that the suit be struck out.***
3. At the hearing of the application before Court, the Plaintiff/Respondent was absent but the Applicant established that he was served through his counsel and I was satisfied about the same based on the affidavit of service by Henry Ohenyo, the process server sworn on 15th June, 2015. However, I note that the plaintiff/respondent did oppose the application now before Court vide a replying affidavit, sworn on 30th May, 2014. I will therefore consider it as it is on record and determine the motion on merit.
4. Looking at the plaint filed herein this Court must point out from the onset that the same is either not well drafted or the plaintiff is unsure of his cause of action and against whom. The 2nd paragraph of the plaint describes the defendant as “an adult male of sound mind and the Chief Government Advisor.” He does not state whether he is describing the 1st or the 2nd defendant and if it is the 1st defendant he does not state whether he is suing the office of the Attorney General which should be the case or whether he is suing the person occupying the office of the Attorney General.
5. Secondly the plaintiff has not clearly stated the capacity under which the 2nd defendant has been sued. The plaint has not pointed out what the mandate or what statutory functions are that the 2nd

- defendant are obligated under the law to fulfill in order to lay a basis for his cause of action.
6. The plaintiff simply states under paragraph 4 of the plaint;

“sometimes on 15th May, 2013 the plaintiff herein visited hospital complaining that he was feeling unwell and lacking sleep due to the causes of Radio/T.V Network/airwaves/phone network he was using.”

It is difficult to figure out from the paragraph what the complaint is all about whether his sickness was due to lack of sleep or sound of radio, or T.V. network (whatever it was), or whether his mobile phone was giving him problems caused by the device he was using, or it was network problems or whether it was a question of radiation. It is actually difficult to understand the basis of his complaint especially given what is stated under paragraph 5 and 6 of the plaint.

7. Under paragraph 5 of the plaint the plaintiff has pleaded as follows:

“The plaintiff was treated for trauma in Kenyatta National Hospital and discharged though he incurred some cost which upto date have not been settled.”

In paragraph 6 he pleaded as follows:

“The plaintiff has also complained to the Kenya National Commission on Human Rights and he was referred to an advocate for further action in a court of law.”

The cause of trauma or the nature is not stated in relation to what the defendants are supposed to do to prevent or whether the same is attributable to acts of commission by either of the defendants or both.

In paragraph 7 the plaintiff has pleaded as follows:

“the plaintiff was further referred to the court by the same organization vide a letter dated 8th July, 2013.”

I have had the occasion to look at the letter dated 8th July, 2013 from Kenya Human Rights Commission as the same was annexed to the plaint as part of the documents in support of the suit. However, the letter is intriguing as it talks of “a domestic dispute” between the plaintiff herein and one LESLIE WANJIRU which dispute was reported to their office on 25th April, 2013. The letter in regard to the suit is vague and misplaced.

8. A suit should be framed in such a way that the cause of action against the named defendant(s) can clearly be discerned to enable the defendant to defend itself/himself/herself. I do find that the suit herein has failed to comply with **Order 2 rule 1** of the **Civil Procedure Rules**. The respondent in his replying affidavit deposed that he has a constitutional right to file the suit which he does but he has failed to demonstrate or show the nexus between what he describes as “statutory mandate by the defendant to protect the consumer of the communication services for any network/airwaves” and his afflictions if any.
9. This Court is granted discretionary power to strike out pleadings under **Order 2 rule 15** of the **Civil Procedure Rules** particularly pleadings that discloses no reasonable cause of action, causes that are clearly scandalous, frivolous or vexatious. The discretion however, has to be used in a sparing manner as was decided in the case of **COAST PROJECTS LTD. -VS- M.R. SHAH CONSTRUCTION (K) LTD. [2004] 2 KLR** where the Court of Appeal made the following observations:

“Summary procedure is a radical remedy and a court of law should be slow in resorting to this procedure which can only be applicable in plain, clear and obvious cases.”

10. It is also important to note that courts must do all they can to maintain causes in court in order to determine them on merit by examining discoveries, documents and considering oral evidence adduced and tested by cross-examination. However, in this case the pleadings in the plaint and documents filed in support simply do not add up. This Court is persuaded by the Applicant's contention that the suit does not disclose a nexus between unsubstantiated health condition of the Plaintiff and the statutory mandate of the Applicant – the 2nd defendant. As indicated above the claim is too vague and frivolous to be responded to or to defend because the plaintiff himself is unsure of what he is really complaining about or what remedy he expects from court. In his plaint, he asked for the following relief:-

“that the 2nd defendant be or denied to stop radio and T.V station transmitting/recording/advertising/repeating his words while broadcasting their awareness which are torture to him.” (sic)

This relief is not only vague and odd but incapable of being granted. As indicated earlier the plaintiff's suit is either drafted poorly or the plaintiff is unsure of what he wants. Either way, this is one of those exceptional and clear circumstances that a court such as this can rightly exercise its discretion under **Order 2 rule 15** in order to achieve overriding objective of the Act under **Section 1A** and **1B** of the **Civil Procedure Act** by providing a timely remedy in order to save on costs and judicial time.

11. In view of the foregoing this Court is satisfied that the Notice of Motion dated 30th May, 2014 is merited. The same is allowed. Consequently the suit herein is struck out with costs to the defendants.

Dated and delivered at Kerugoya this 6th day of July, 2015.

R. K. LIMO

JUDGE

6.7.2015

Before Hon. Justice R. Limo

Court Assistant

Ngigi holding brief for Inyango for 2nd defendant.

No appearance for plaintiff

COURT: Ruling signed, dated and delivered in the presence of Ngigi holding brief for Inyango for 2nd defendant/applicant and in the absence of Mugo advocate.

R. K. LIMO

JUDGE