

THE REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E477 OF 2024

SAIKUMAR

ALLAKA.....CLAIMANT/RESPONDENT

VERSUS

SAFARICOM

PLC.....RESPONDENT/APPLICAN

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RULING

1. Before Court is the Respondent/Applicant's Motion application dated 25th November, 2024, brought pursuant to Section 3(1) and 12(3)(viii) of the Employment & Labour Relations Court Act, Rule 33 & 45 of the Employment and Labour Relations Court (Procedure) Rules 2024, Section 4(2) of Limitation of Actions Act and Order 2 Rule 15 of the Civil Procedure Rules, 2010. The Applicant seeks orders

THAT: -

- i. This Honourable Court be pleased to strike out the Statement of Claim dated 24th June, 2024.
- ii. In the alternative, this Honourable Court be pleased to strike out paragraphs 51, 52, 181, 225, 226,227, 228, 229, 230, 231, 232, 237, 238, 239, 240, 241, 242, 281, 282 and 284 (f) of the Statement of Claim dated 24th June 2024.

- iii. The costs of this application and the suit be borne by the Claimant.
2. The application is supported by grounds on the face of the Motion and the affidavit of one **Daniel Ndaba**, Counsel for the Applicant sworn on 25th November, 2025. The crux of the application is that while Applicant filed its Statement of Response, it is not possible, owing to the ambiguous, unintelligible and voluminous nature of the Statement of Claim to ascertain whether the Applicant may have missed addressing in its Statement of Response, some key facts/issues hidden in the verbiage, and risks being taken by surprise at the hearing.
 3. The Applicant avers that the Statement of Claim as drawn, which runs to 90 pages, has been inelegantly drafted, is verbose, ambiguous and unintelligible thereby may prejudice, embarrass or delay fair trial for the following reasons:-
 - i. The Claimant alleges in paragraphs 51, 52, 181, 225, 226, 227, 228, 229, 230, 231, 232, 237, 238, 239, 240, 241, 242, 281, 282 and 284 (f) of the Statement of Claim reputational damage as a result of defamatory words published by Shahidi News on 16th November 2021.
 - ii. The alleged publication (if any) that any claim regarding defamation as a result of the said publication could only have been brought within a

year of its publication, hence this Honourable Court lacks jurisdiction to entertain the same.

- iii. In paragraphs 281 and 282 of the Statement of claim, the Claimant has pleaded on behalf of his spouse regarding alleged damage suffered to her, yet she is not a Co-Claimant.
- iv. This Honourable Court therefore also lacks jurisdiction to interrogate the allegations raised by the Claimant in paragraphs 281 and 282 of the Statement of Claim since they are outside the context of employer-employee relationship.
- v. The Statement of Claim as drawn defeats the essence of concise pleadings, is unfocussed, incomprehensible due to its verbosity and repetitiveness, is rife with conjecture and hyperbolic statements and arguments, and has failed to succinctly define the issues in contention in order to guide the testimony required for expedited hearing of the case.

4. The Applicant prays that the Statement of Claim should therefore be struck out with costs, or in the alternative, this Court be pleased to strike out the offending paragraphs 51, 52, 181, 225, 226, 227, 228, 229, 230, 231, 232, 237, 238, 239, 240, 241, 242, 281, 282 and 284f) of the Claim so as to enable the Applicant to only respond to the allegations that are within this Court's jurisdiction to determine.

- 5.** The Respondent/Applicant finally avers that the application is unmerited and should be dismissed.
- 6.** The Claimant/Respondent opposed the application vide a Replying affidavit sworn by him on 27th November, 2024. He states that the application is frivolous, vexatious and an abuse of court process and solely intended to delay and prejudice the fair hearing and expeditious disposal of this suit.
- 7.** It is the Claimant/Respondent assertion that contrary to the averments by the affiant of the affidavit, the Applicant has filled an equally robust and elaborate defense to the Claim comprising 19 pages, where it has responded succinctly to every allegation pleaded by the Claimant/Respondent, and therefore cannot approbate and probate at the same time.
- 8.** He avers that the application dated 25th November 2024 is speculative at best and does not raise any conject and legally sound and justifiable reasons, and that mere apprehensions do not constitute valid legal grounds.
- 9.** The Claimant states that the impinged paragraphs are focused on demonstrating how he, together with his family suffered and the Respondent has to be brought into account for its actions and omissions that breached the law.

10. The Claimant avers that this application is merely an afterthought, filed in response to the submission of their further list of documents, and that it is evident that the opposing party, upon realizing the weakness of their case, has resorted to filing this notice of motion as a deliberate tactic to waste time and delay the adjudication of this matter.

11. It is the Claimant's position that in considering the claim, the court ought not to take a restrictive approach as proposed, but rather, view the evidence and circumstances of the case as a whole and do wholesome justice to all parties.

12. He states that the Applicant is possessed of all relevant facts and materials relating to the Claim, and is thus capable of raising and sustaining a good defense.

The Respondent/Applicant Submissions

13. The Applicant submits that the cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action (or defence) and that material facts are only those relied on to establish the essential elements of the cause of action. It submits further, that the Statement of Claim as drafted, makes it hard to identify the material facts in issue and complicates rather than simplifying the issues for determination by the court. It sought reliance in the decision of Mativo J. in ***World Explorers Safaris Limited v Cosmopolitan***

Travel Limited & another [2021] eKLR to buttress this position.

- 14.** It is the Applicant's submission that the voluminous Statement of Claim as filed will hinder the just, expeditious, efficient and proportionate resolution of the matter. It submits that the Claimant and its advocate have a duty to assist the court to further the principal objective as provided in Section 3(1) of the ELRC Act.
- 15.** It is submitted that the real issues in dispute have been obscured. and it will therefore, require an inordinate amount of judicial time and resources for the court to decipher the real issues in dispute which will result in unnecessary costs to the parties in terms of the period required to comply with pre-trial directions, preparation of the respective witnesses and hearing of the matter. Reliance was had to the case of ***Peter Kariuki Manthi - vs- Attorney General & another [2018] eKLR*** for the holding that:-

".... Although a primary function of a pleading is to tell the defending party what claim it has to meet, an equally important function is to inform the court or tribunal of fact precisely what issues are before it for determination

"

16. The Applicant submits that in view of the foregoing, it has made out a strong case for striking out the Statement of Claim.

The Claimant/Respondent's Submissions

17. It is the Claimant's submission that the length of pleadings alone cannot invalidate a claim. He submits further, that this is a very complex claim and the length reflects the complexity of this dispute, which involves wrongful dismissal, malicious intent, and multi-dimensional reputational harm spanning professional, social, and familial spheres.

18. The Claimant submits that the Court is properly seized of the matter and it will be unfair to strike it out without hearing the merits of the claim which raises substantive issues. He sought to rely in ***Nairobi Cause No. 1395 of 2016, Peter Barasa & 4 Others v Futons & Furniture Company Limited***, where Hon. Justice Maureen Onyango emphasized the cautious approach required when dealing with striking out applications. The judge cited the decision in ***D. T. Dobie & Company (K) Ltd v Muchina, per Madan JA***, where it was held:-

“As the power to strike out pleadings is exercised without the court being fully informed on the merits of the case through discovery and oral evidence, it should be used sparingly and cautiously.”

- 19.** The Claimant therefore urges this Honourable Court to adopt the same reasoning, and decline the Applicant's request to strike out the claim.
- 20.** The Claimant submits that justice is best served by allowing the matter to proceed to full hearing, where all parties can ventilate their issues, and the court can determine them on merit.
- 21.** The Claimant further submits that the application before this Court does not meet the threshold for striking out a pleading. He placed reliance in the Court of Appeal's decision in ***Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Others [2013] eKLR*** to support this position.
- 22.** The Claimant submits that the impugned paragraphs (51, 52, 181, 225-232, 238-242, and 284(f)) do not constitute a defamation cause of action within the meaning of Section 4(2) of the Limitation of Actions Act, but instead, they form part of the broader claim for damages flowing directly from wrongful dismissal.
- 23.** The Claimant submits that it is evident that his Statement of Claim discloses a proper and arguable cause of action against the Respondent and the Notice of Motion dated 25th November 2024 is without merit and should be dismissed.

Analysis and Determination

- 24.** I have considered the application, the grounds and affidavit in support, the replying affidavit in opposition and the parties' submissions. The issue for determination is whether the Applicant has justified the striking out of the Claimant's claim or part thereof.
- 25.** Generally, a court can strike out a party's pleadings if it is found lacking in clarity, is prolix, vague, unnecessarily lengthy, frivolous or otherwise defective.
- 26.** The Applicant herein, seeks the strike out of the Claimant's statement of claim on the basis that it is verbose, ambiguous and unintelligible, thereby may prejudice, embarrass or delay fair trial.
- 27.** The Claimant/Respondent on his part, asserts that contrary to the averments by the Applicant, it has filled an equally robust and elaborate defense to the Claim comprising 19 pages, where it has responded succinctly to every allegation pleaded by the Claimant/Respondent and therefore cannot approbate and probate at the same time.
- 28.** Under Order 2 Rule 15 of the Civil Procedure Rules, a party may apply to strike out a pleading if it discloses no reasonable cause of action, if it is scandalous, frivolous or vexatious, where it may prejudice or delay the fair trial of the action or where the pleading is an abuse of the court process.

29. Order 2 Rule 3 of the Civil Procedure Rules, further requires that pleadings contain a statement in a concise form of the material facts on which the party relies. The Rule therefore, expressly mandates conciseness in pleadings and failure to comply, may warrant the striking out of the offending pleading.

30. In the case of ***D.T. Dobie & Company (Kenya) Ltd v. Muchina (1982)*** the Court of Appeal emphasized that pleadings which disclose no cause of action or is otherwise embarrassing or prejudicial may be struck out under Order 2 Rule 15.

31. In a later decision by the Court of Appeal in ***Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Others [2013] eKLR*** the court had this to say on striking out of pleadings:-

“The power to strike out pleadings, and in the process deprive a party of the opportunity to present his case has been held over the years to be a draconian measure which ought to be employed only as a last resort and even then, only in the clearest of cases....”

32. A glance at the paragraphs of the pleading that the Applicant seeks to be struck out, show that the said paragraphs emphasize the impact of the Respondent’s alleged actions on the Claimant and his future career prospects. The court further notes that the Claimant has

sought an award of exemplary damages under his statement of claim, and he can only prove this by leading evidence that portray the employer as having been malicious, oppressive or egregious against him, and which I believe is where the Claimant seem to be headed through the averments in the subject paragraphs.

33. In my view, though the Claimant's claim is quite lengthy, I do not find it inconcise, frivolous or in any way embarrassing or prejudicial to the Applicant/Respondent. In any event, the Applicant/Respondent has put in an equally lengthy response, confirming that it was possible for it to respond to every issue raised by the Claimant.

34. I light of the foregoing, I find the Applicant/Respondent's application devoid of merit and is hereby dismissed.

35. Costs shall abide the cause.

36. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 23RD DAY OF OCTOBER,
2025.**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Nyakundi h/b for Mr. Ondieki for the Claimant/Respondent
Mr. Okole h/b for Mr. Kenneth Wilson for the
Respondent/Applicant
Ms. Esther S -C/A