



Geminia Insurance Company Limited v Klaption Insurance Company Limited (Commercial Case E181 of 2020) [2025] KEHC 17251 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E181 OF 2020
PM MULWA, J
NOVEMBER 20, 2025**

BETWEEN

GEMINIA INSURANCE COMPANY LIMITED PLAINTIFF

AND

KLAPTON INSURANCE COMPANY LIMITED DEFENDANT

RULING

1. By a Chamber Summons application dated 18th February 2025, the Defendant sought the suit herein be struck out with costs to it. The application is supported by the affidavit of Munyiva Mbevi, an Advocate representing the Defendant. She avers that the Plaintiff failed to disclose the existence of a similar case where some Kshs. 206,750 = was awarded to it, and part of the amount had already been recovered. She urged the Court to dismiss this suit as it would amount to unjust enrichment on the part of the Plaintiff.
2. In opposition, the Plaintiff filed a replying affidavit sworn by Nelly Mwathi, the Company Secretary and Head of Legal, on 21st March 2025. She deposes that the alleged other suit, that is, Milimani HCCOMM E164 of 2024 – Geminia Insurance Company Limited v United Pharma (K) Limited and Another was about enforcement of a debt settlement agreement of Kshs. 332 million which had been executed by the parties therein.
3. She avers that the same was about breach of a re-insurance agreement for the sum of Kshs. 376 million between the Plaintiff and the Defendant herein. That the two suits are against different parties, have a different subject matter, the reliefs sought are different and the causes of action are not the same. The Plaintiff urges the application be dismissed for lacking in merit.
4. The application was canvassed by way of written submissions. The Defendant’s submissions are dated 20th May 2025 while those by the Plaintiff are dated 26th May 2025.



Analysis and determination

5. I have carefully considered the application, the affidavits on record, and the rival submissions. The main issue for determination is whether the Defendant's application meets the threshold to warrant the striking out of the Plaintiff's suit.
6. The Defendant urges the Court to strike out the suit on the ground that it the Plaintiff instituted the same without disclosing the existence of the ruling in HCCOMM E164 of 2024 wherein it had already recovered a significant sum of the decree. It was contended that the proceedings herein are unnecessary, duplicative and aimed at unjust enrichment.
7. It is trite law that the power to strike out a pleading is a draconian measure that must be exercised sparingly and only in the clearest of cases. The Court of Appeal in D.T. Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1 held that striking out a suit is a drastic step which should only be taken when it is plain and obvious that the pleading discloses no reasonable cause of action or defence and that no amendment can cure the defect.
8. In the present case, I note the Plaintiff vide an un-dated amended plaint seeks, as against the Defendant, a declaration for breach of reinsurance agreement, indemnification in terms of the reinsurance slip and payment of Kshs. 373,048,178 = plus interest. Having perused the pleadings in HCCOMM E164 of 2024 I note that the parties sued by the Plaintiff are United Pharma (K) Limited and Another and the reliefs sought against the Defendants vide plaint dated 3rd April 2020 were payment of Kshs. 206,189,750 = with interest at 15% per annum effective 1st March 2023 till payment in full. The basis of the claim arose out of a debt settlement agreement entered into between the parties therein.
9. Having reviewed the pleadings and submissions, my considered view is that the present suit and HCCOMM E164 of 2024 are distinct in terms of parties, subject matter and the reliefs sought. I am not persuaded that the instant application meets that threshold. The Plaintiff has demonstrated the existence of issues worth consideration through trial and the Court will be hesitant to shut it out.
10. Consequently, the Defendant's application dated 18th February 2025 lacks merit and is dismissed with costs to the Plaintiff.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 20TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Omagwa h b for Mr. Kibanga for Plaintiff Respondent

Ms. Munyiva for Defendant Applicant

Court Assistant : Carlos

