



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 930 OF 2017**

**SYLVIA METIAN LANTEI.....PLAINTIFF**

**VERSUS**

**DORCAS NAIPEI NTORE.....1<sup>ST</sup> DEFENDANT**

**NEWTON WANYOIKE NTORE.....2<sup>ND</sup> DEFENDANT**

**LEISA HILL GIRLS SCHOOL .....3<sup>RD</sup> DEFENDANT**

**RULING**

What is before me for determination is the 2<sup>nd</sup> Defendant’s application dated the 29<sup>th</sup> October, 2018 brought pursuant to Order 2 rule 15 and Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act and all the other enabling provisions of the law. In the application the 2<sup>nd</sup> Defendant seeks for the 1<sup>st</sup> Defendant’s Defence dated the 10<sup>th</sup> April, 2018 to be struck out in its entirety.

It is premised on the summarized grounds that the said Defence discloses no reasonable cause of action and it reiterates the Plaintiff’s claim. It is an abuse of the process of the Court and exposes collusion with the Plaintiffs. Further, the allegation by the 1st Defendant of having been the 2<sup>nd</sup> Defendant’s lover, is scandalous. It is baseless, vexatious, devoid of a specific prayer and untenable.

The 1<sup>st</sup> Defendant has opposed the application and filed Grounds of Opposition dated 4<sup>th</sup> December, 2018 where she stated that her statement of Defence raises triable issues and is a reasonable one to the Plaintiff’s claim. She denies that the Statement of Defence is a collusion with the Plaintiff’s claim. Further, that it does not offend or contradict the Civil Procedure Act including Rules. She insists her Defence is not spurious but tenable.

The Plaintiff, 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not file any response to oppose the application.

The 2<sup>nd</sup> Defendant filed submissions while the 1<sup>st</sup> Defendant filed a List of Authorities which I have considered.

**Analysis and Determination**

Upon consideration of the materials presented in respect of the application dated the 29<sup>th</sup> October, 2018, the only issue for determination is whether the 1<sup>st</sup> Defendant’s statement of Defence dated the 10<sup>th</sup> April, 2018 should be struck out.

The 2<sup>nd</sup> Defendant insists the 1<sup>st</sup> Defendant’s Defence should be struck out. He submitted that the said defence does not raise a reasonable cause of action; is an abuse of the court process; frivolous vexatious and scandalous; and lacks specificity. He relied on various authorities including **Melika V Mbuvi Civil Appeal No. 267 of 1997; Blue Sky EPZ Limited V Natalia Polykova & Anor (2007); Patel Vs E A Cargo Handling Services Ltd (1975) EA 75George PB Ogendo Vs James Nandwa & 4 Others (2006) eKLR and Kivanga Estates Limited V National Bank of Kenya Limited (2017) eKLR** to support his arguments. The 1<sup>st</sup> Defendant filed the following authorities **HCCC No. 246 of 2005 John Karumba V Dakagi Holdings Limited; HCCC No. 713 of 1996 James Njoroge Karuga V Hannah Njoki; HCCC No. 445 of 2006 Regina Wamuyu Githaiga Vs First Lotto Limited and HCCC No. 44 of 2005 Nation Media Group V Communication Concept** to oppose the application.

Order 2 rule 15 of the Civil Procedure Rules provides as follows: **‘(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that— (a) it discloses no reasonable cause of action or defence in law; or (b) it is scandalous, frivolous or vexatious; or (c) it may prejudice, embarrass or delay the fair trial of the action; or (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.’**

In the Court of Appeal in the case of **RAMJI MEGJI GUDKA LTD –Vs- ALFRED MORFAT OMUNDI MICHIRA & 2 OTHERS** [2005] eKLR held as follows:

*“In our view, the power to strike out pleadings must be sparingly exercised. It can only be exercised in clearest of cases. The issue of summary procedure and striking out of pleadings was given very careful consideration by this Court in DT DOBIE & COMPANY (KENYA) LTD. V. MUCHINA [1982] KLR 1 in which Madan J.A. at p. 9 said:-*

*“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits “without discovery, without oral evidence tested by cross-examination in the ordinary way.” (Sellers LJ (supra). As far as possible indeed, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks right.”*

*In dealing with the issue of triable issues, we must point out that even one triable issue would be sufficient. A Court would be entitled to strike out a defence when satisfied that the defence filed has no merit and is indeed a sham.”*

Further, in the case of **Patel V EA Cargo Handling Services Ltd (1974) EA 75 William Outfus P** at page 76 stated:

*“... In this respect defence on merits does not mean, in my view, a defence that must succeed, it means as Sheridan J put it “a triable issue” that is an issue which raises a prima facie defence and which should go to trial for adjudication”.*

In the current scenario, I note the 1<sup>st</sup> Defendant’s Defence explains her participation in the various transactions in respect of the suit land and the 2<sup>nd</sup> Defendant’s involvement therein. Insofar as the 2<sup>nd</sup> Defendant finds the 1<sup>st</sup> Defendant’s Statement of Defence as an abuse of the court process; frivolous vexatious and scandalous; and lacking specificity, I opine that the said Defence raises triable issues that should proceed to full trial for adjudication and not dispensed with at an interlocutory stage.

In relying on the above two Court of Appeal decision above as well as the facts as presented, I find that it would be pertinent if the suit was set down for hearing on its merits to enable the court make a final determination of the dispute at hand.

In the circumstances, I will disallow the 2<sup>nd</sup> Defendant’s Application dated the 29<sup>th</sup> October, 2018 to strike out the 1<sup>st</sup> Defendant’s Statement of Defence and direct that all the parties do comply with Order 11 and set the suit down for hearing.

Costs will be in the cause.

**Dated signed and delivered in open court at Kajiado this 27<sup>th</sup> day of May, 2019**

**CHRISTINE OCHIENG**

**JUDGE**