



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gachanja Muhoro and Sons Limited t/a Easy Mart Supermarket v Kamau & another  
(Civil Case E222 of 2024) [2026] KEHC 34 (KLR) (Civ) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 34 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E222 OF 2024**

**SIFUNA NIXON, J**

**JANUARY 15, 2026**

**BETWEEN**

**GACHANJA MUHORO AND SONS LIMITED T/A EASY MART  
SUPERMARKET ..... PLAINTIFF**

**AND**

**MARTIN NG'ANG'A KAMAU ..... 1<sup>ST</sup> DEFENDANT**

**JANE WANJIRU NGANGA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the Defendant's Motion dated 22<sup>nd</sup> November 2024. The same which is principally brought under Order 2 Rule 15 (1) (b) (c) and (d) of the Civil Procedure Rules is supported by the Supporting Affidavit of Martin Ng'ang'a who is the 1<sup>st</sup> Defendant. It is seeking the striking out of this suit, on grounds of want of jurisdiction, and for being an abuse of the Court process.
2. From the Complaint dated 16<sup>th</sup> October 2024, this suit seeks the following reliefs:
  - a. A mandatory injunction compelling the Defendants to release to the Plaintiff a Perkins Diesel Generator IP 200K Serial No. U037810W, that is currently in the Defendants' possession and control.
  - b. Compensatory damages of Ksh 38,325,000= for utilization [loss of user] of the said Generator. Calculated at the rate of Ksh 15,000= for 2,555 days.
  - c. General damages of the Generator's illegal seizure.
  - d. Costs of this suit.
  - e. Interest on (b) and (c) at Court rates.



3. The suit is opposed through its filed Statement of Defence dated 26<sup>th</sup> November 2024. In which the Defendants have averred that this suit is time-barred by the *Limitation of Actions Act* (Cap 22 Laws of Kenya). Further that the suit is related to an Appeal that is pending in the Court of Appeal, hence that it is sub judice. The said Statement of Defence also challenged this Court's jurisdiction in this matter. Averring that the subject matter in this suit exceeds this Court's pecuniary jurisdiction. This are the more or less the same grounds that the Defendants are raising in this Application.
4. The Plaintiff opposed the Application through a Replying Affidavit of 6<sup>th</sup> December 2024. Thereafter, the Application proceeded by way of written submissions. The Plaintiff's submissions are dated 18<sup>th</sup> February 2025. While the Defendant's submissions are dated 16<sup>th</sup> June 2025.
5. I have perused the Application (together with its Supporting Affidavit), the Replying Affidavit, the parties' pleadings on record, as well as their rival submissions. I have also perused the Plaint as well as the Defendants' said Statement of Defence.
6. On the issue of the jurisdiction of this Court, I need to remind the Defendants that the pecuniary jurisdiction of the High Court, is unlimited. Further, the subject matter of this suit is not land, but seizure of a chattel (i.e. a generator); and the loss of user arising from such seizure. This is therefore a matter in which this Court as the High Court has jurisdiction; and which also falls within this Court's pecuniary jurisdiction.
7. On the prayer for the striking out of this suit, courts have umpteen times held that the striking out power of the court, is a rather drastic one, that need to be exercised sparingly, and in the extreme circumstances where a suit is so hopeless that it cannot be salvaged even by amendment of pleadings.
8. Upon perusing the Plaint, I find that its grievance is justifiable and such as ought to be interrogated by the Court. The Defence filed by the Defendants also raises triable issues that should be determined be by the calling of witnesses and the adduction of evidence.
9. Courts need towards determining disputes on their merits; rather on interlocutory motions such as this, or on technicalities, and niceties of procedure.
10. The pleadings having closed, and the issues set for determination, this suit ought to proceed to trial. So that the parties call their witnesses and adduce evidence. To enable this Court determine this suit on the merits.
11. For those reasons, this Application fails, and is hereby dismissed, with costs.

**DATED AND DELIVERED AT NAIROBI ON THIS 15<sup>TH</sup> DAY OF JANUARY 2026.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

