

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO. E253 OF 2025

YVONNE MUTINDI MUSYOKI.....1ST CLAIMANT

WILLIAM LENGOYIAP.....2ND CLAIMANT

VERSUS

HON. JEREMIAH OMBOKO MILEMBA.....1ST
RESPONDENT

HON. CATHERINE NANJALA WAMBILIANGA.....2ND
RESPONDENT

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS
(KUPPET).....3RD
RESPONDENT

RULING

Background

1. Before the court is an application dated 30th May 2025 through which the Respondents pray for an order to strike out this suit. The thrust of the application is that the Claimants ought to have referred their grievance against the 1st and 2nd Respondents to the Parliamentary Powers and Ethics Committee before they filed suit. As such, the Respondents contend that the suit is fatally defective for want of compliance with the principle of exhaustion of alternative remedies and should be struck out.

2. A brief background of the dispute is necessary to understand the matter. The 1st and 2nd Respondents are both members of Parliament. They are also officials of the 3rd Respondent.
3. The Claimants contend that the two Respondents cannot simultaneously serve as officials of the 3rd Respondent and as members of Parliament. According to the Claimants, the Constitution of the 3rd Respondent requires that persons who hold the positions which the 1st and 2nd Respondent are holding in the 3rd Respondent to serve on fulltime basis. As such, the Claimants contend that the 1st and 2nd Respondents cannot discharge this function whilst simultaneously serving as members of Parliament.
4. The Claimants further contend that provisions of *the Constitution of Kenya 2010* and *the Leadership and Integrity Act 185 C Cap Laws of Kenya* forbid state officers from holding two offices simultaneously. They contend that the 1st and 2nd Respondents are state officers by virtue of their positions as members of Parliament and are thus not entitled to serve as fulltime officials of the 3rd Respondent.
5. After the Respondents were served with the pleadings in the Cause, they filed the instant application seeking the following orders:-

- a) Spent.
 - b) That the court be pleased to strike out the Memorandum of Claim.
 - c) That the court grants any other or further orders as it may deem fit to meet the ends of justice.
 - d) That the Claimants be condemned to pay costs of the application.
6. The justification for the application is as set out in the opening section of this decision. The application is supported by an affidavit sworn by the 1st Respondent.
 7. The Claimants have opposed the motion. They have filed an affidavit by the 1st Claimant dated 23rd June 2025 to anchor their objection to the motion.
 8. The Claimants contend that the application is motivated by ulterior intent and is misconceived. They contend that the application does not satisfy the threshold for striking out a suit and should be dismissed.
 9. The Claimants contend that a suit can only be struck out if it is demonstrated that it is hopeless, scandalous, frivolous or vexatious. They aver that the Respondents have not demonstrated that the instant action fits the above description.

10. The Claimants contend that the requirement for exhaustion of alternative remedies is not absolute. It is their case that the law allows the court to exempt parties from the requirement as long as there are exceptional circumstances to warrant such exemption.
11. The Claimants contend that the Respondents have not cited the provisions of law which make it mandatory for disputes such as the one before Court to be presented to the Parliamentary Powers and Ethics Committee. As such, they contend that the application is misconceived.
12. The Claimants aver that the issues raised in the suit involve interpretation of the Constitution, a function which courts of law are best suited to discharge. They contend that the entities which the Respondents suggest should handle the dispute are not suited for this work.

Analysis

13. The law on striking out of pleadings is now well settled. It is recognized that striking out of pleadings is not only drastic but also draconian as it has the effect of removing a litigant from the seat of justice. As such, it should only be resorted to as a measure of last resort.

14. Pleadings may only be struck out if they are obviously frivolous and vexatious. Further, an order to strike out pleadings will only issue if it is demonstrated that the suit that is the subject of the application to strike out is irredeemably hopeless and cannot be saved through an order of amendment of pleadings.
15. These principles have been reiterated in a series of decisions. In the case of ***DT Dobie & Company (Kenya) Limited v Muchina & another [1980] KECA 3 (KLR)***, the Court of Appeal observed as follows:-

“It cannot be doubted that the court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the court. It is a jurisdiction which ought to be very sparingly exercised and only in exceptional cases....

... The summary remedy which has been applied to this action is only applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the court.....

..... It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable.....

..... If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not

to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it....

....No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

16. In ***Jajeu Ole Kamasia & 5 Others v Daniel Kipronoh Naimoja [2011] KEHC 1190 (KLR)***, the learned trial Judge observed on the subject as follows:-

“It is trite law that striking out a pleading is such a drastic and draconian act that, it is a jurisdiction that must be invoked or exercised with utmost caution, care, restraint and in the clearest of cases. As correctly observed in the case of ICDC -vs- Dafer Enterprises Ltd (2001) IE.A. 75 “... unless the matter is plain and obvious a party to a civil

litigation is not to be deprived of his right to have his case tried by a proper trial...”

17. The Respondents’ contention is that the Claimants’ suit should be struck out because they approached the court without first exhausting the existing alternative dispute resolution procedures. They contend that the Claimants ought to have presented their grievance to the Parliamentary Powers and Ethics Committee. They rely on sections 42 and 43 of *the Leadership and Integrity Act* to anchor their case.
18. I have looked at the aforesaid provisions. Section 42(1) of the Act provides as follows:-

“A person who alleges that a State officer has committed a breach of the Code, may lodge a complaint with the relevant public entity and the public entity shall register and inquire into the complaint.”

19. This provision is couched in discretionary terms. As such, the person who is raising a complaint regarding breach of the leadership code by a state officer is not bound to first raise the matter with the relevant public entity. He has the liberty to either do so or move the court over the grievance. As such, the instant application by the Respondents is without merit.

20. For some unclear reason, the Respondents describe the instant action as a constitutional petition when it is not. Proceeding on this false premise, they urge the court to invoke the doctrine of constitutional avoidance to decline jurisdiction over the suit. Clearly, their plea is premised on a misconception of the nature of pleadings that were filed by the Claimants.

Determination

21. The upshot is that the court declines to strike out the instant suit.

22. Costs of the failed application are granted to the Claimants.

Dated, signed and delivered on the 29th day of January, 2026

**B. O. M. MANANI
JUDGE**

In the presence of:

.....for the Claimants

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules

which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI