

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
COMMERCIAL SUIT NO. E445 OF 2023

LIBERA IMPEX LIMITED.....PLAINTIFF

VERSUS

**LIBERA EXECUTIVE
LIMITED.....DEFENDANT**

RULING

1. The plaintiff filed the Notice of Motion dated 25th July 2025, mainly under Order 4 Rule 1(4) and Order 2 Rule 15 of the Civil Procedure Rules, seeking that:
 - i. The defendant's statement of defence and counterclaim both dated 7th November 2027 (sic) and the verifying affidavit by one Paul Ndegwa Mwangi deponed on 7th November 2023 be struck out.*
 - ii. Judgment be entered for the plaintiff as prayed for in the plaint dated 12th September 2023.*
 - iii. Costs of this application be borne by the defendant.*
2. The application is supported by the affidavit sworn by Peter Njau Kiige, a director/shareholder of the plaintiff company on 25th July 2025 as well as written submissions dated 11th August 2025.
3. The plaintiff contends that the purported resolution of the Board of Directors of the defendant company dated 7th October 2023 which appointed the firm of M/s Irungu Mwangi Ng'ang'a

TT & Company Advocates to defend the suit and authorized one Paul Ndegwa Mwangi to execute documents and swear affidavits on behalf of the defendant, bears no names of the signatories and/or directors of the defendant company and is therefore invalid, un-authenticated and of no legal effect.

4. The plaintiff further contend that there is no evidence that the said Paul Ndegwa Mwangi had the requisite authority under seal of the defendant company as required under Order 4 Rule 1(4) of the Civil Procedure Rules.
5. The plaintiff urged the court to grant the orders sought and relied on the following cases:

1) Leo Investments Limited v Trident Insurance Company Limited (2014) KEHC 8664 (KLR)

2) Microsoft Corporation v Mitsumi Computer Garage Limited & Another (2001) eKLR.

6. The defendant had not responded to the application as at 27th October 2025 when the date for ruling was fixed. When writing this ruling I noted a replying affidavit had been filed sworn by Paul Ndegwa Mwangi, a director of the defendant company, on 29th October 2025. I have considered the same alongside all other material herein.
7. Mr. Ndegwa admitted that the Board Resolution dated 7th October 2023 did not have the names of the persons who signed the same, but the omission was inadvertent and substantive justice would not be served by striking out the defence and counterclaim. After all, Mr. Ndegwa stated, he is the one who executed the verifying affidavit and witness

statements where his name is clearly indicated. He urged the court to dismiss the application.

8. The defendant relied on **Articles 49** and **152** of the **Constitution** on the principles of justice being served without undue procedural technicalities.

Analysis and determination

9. The issue before the court is whether the plaintiff has satisfied the conditions for the striking out of the defence, counterclaim and the verifying affidavit herein.

10. The court's power to strike out pleadings is discretionary (**Order 2 Rule 15** of the **Civil Procedure Rules**). The exercise of that discretion must be based on principle and not on a whim. The court also considers the unique circumstances of the case.

11. In **Ramji Megji Gudka Ltd v Alfred Morfat Omundi Michira & 2 others [2005] eKLR** the Court stated that:

“The power to strike out pleadings must be sparingly exercised. It can only be exercised in the clearest of cases.”

12. And in **DT Dobie & Company (Kenya) Ltd. v Muchina [1982] KLR 1**, it was stated that:

“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.”

13. In this case, the plaintiff's main ground is that the Board Resolution which appointed the firm of M/s Irungu Mwangi Ng'ang'a T.T & Company Advocates to defend this suit and equally authorized Mr. Paul Ndegwa to execute documents did not bear the names of the signatories. And that that omission was fatal to the defendant's pleadings.

14. **Order 4 Rule 1 (4), (5) & (6)** of the **Civil Procedure Rules** provide thus:

“(4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

(5) The provisions of sub-rule (3) and (4) shall apply mutatis mutandis to counterclaims.

(6) The court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule.”

15. In the case of **Bugerere Coffee Growers Limited v Sebaduka & another [1970] EA 147** cited by the Court in the case of *Nextgen Mall Management Company Limited v Netcom Investments Limited & another [2021] eKLR* - on the issue of institution of proceedings by a corporate body, it was held that:

“...when companies authorize the commencement of legal proceedings a resolution or resolutions have to be passed either at a company or Board of Directors’s meeting and recorded in the minutes...”

16. Having evaluated all the material placed before the court, it is evident that there indeed exists a resolution of the board of the defendant company. That resolution is signed. The only contention is that the said resolution does not indicate the names of the two directors who signed it. The defendant in its response exhibited the said resolution of its meeting of 7th October 2023.
17. It is my considered view that the omission of the names of the directors signing the resolution does not necessarily invalidate the resolution. As to whose signatures are in the board resolution is a matter of evidence and cannot be determined at the application stage.
18. After all the deponent to the defendant’s response has stated that he is one of the directors who signed the resolution and went ahead to execute the verifying affidavit and witness statements. Therefore, the court finds that the plaintiff’s application has not met the threshold and is for failing.

Disposal

19. The Notice of Motion dated 25th July 2025 is dismissed with no order as to costs. Case to proceed for case management without delay.

RULING delivered virtually, dated and signed at **NAIROBI**

This **29th** day of **January** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Kimani h/b for Mr. Githinji for Plaintiff/Applicant

Court Assistant: *Carlos*