



REPUBLIC OF KENYA



**Meditec Systems Limited v Africare Limited (Civil Suit E027 of 2024)
[2026] KEHC 397 (KLR) (Commercial and Tax) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E027 OF 2024
BK NJOROGE, J
JANUARY 22, 2026**

BETWEEN

MEDITEC SYSTEMS LIMITED PLAINTIFF

AND

AFRICARE LIMITED DEFENDANT

RULING

1. Before the Court is a Notice of Motion dated 13th June 2024 where the Plaintiff/Applicant seeks the following orders;
 - a. The Defence and Counterclaim herein dated 21st March, 2024 and filed on even the date in Court be struck out and judgment be entered against Defendant as prayed for in the Plaintiff.
 - b. The costs of this application and the suit be awarded to the Plaintiff / Applicant.
2. In response to the Application, the Defendant/Respondent has filed Grounds of Opposition on the grounds that;
 - a. The Plaintiff's application does not meet the threshold for striking out a Defence under Order 2 Rule 15 of the Civil Procedure Rules. Striking out a pleading is a drastic measure that must be exercised sparingly and only in clear, exceptional circumstances, which are absent in this case.
 - b. The Defendant's Defence and Counterclaim raise substantive issues, including allegations of breach of contract by the Plaintiff, which resulted in significant financial losses to the Defendant. These disputes cannot be resolved without full interrogation of evidence during the trial.



- c. The Defendant has not admitted the Plaintiff's claims. Instead, it disputes the sum claimed as liquidated and asserts that the Plaintiff failed to perform its obligations under the contract.
- d. The issues raised in the Defence and Counterclaim involve factual disputes that require examination of evidence, including the terms of the agreement, the alleged breaches by the Plaintiff, and the resultant financial losses. Such matters cannot be summarily determined through striking out.
- e. The application seeks to prematurely terminate the Defendant's right to present its case and defend itself against the claims made. This would amount to a violation of the principles of natural justice and the Defendant's constitutional right to a fair hearing under Article 50 of *the Constitution*.
- f. Courts have consistently held that striking out pleadings is a measure of last resort and should not be used where there is a semblance of a valid Defence or Counterclaim. In this case, the Defence and Counterclaim are neither frivolous, vexatious, nor an abuse of the court process.
- g. The Defendant's Counterclaim seeks redress for specific breaches of contract by the Plaintiff, which caused material harm to the Defendant. These issues are inseparable from the Plaintiff's claim and must be resolved through a comprehensive trial.
- h. The application is premature and inappropriate at this interlocutory stage. The orders sought by the Plaintiff would conclusively determine the matter without affording the Defendant an opportunity to fully prosecute its Defence and Counterclaim.
- i. Allowing this application would undermine the public interest in ensuring disputes are resolved conclusively on their merits. It is in the interest of justice for the Court to hear and determine the claims and counterclaims comprehensively.

Issues for determination

3. Having carefully considered the submissions by the parties, the Application and the response therewith, the court frames only one issue for determination.
 - a. Whether the Defence and Counterclaim should be struck out and judgment entered against the Defendant.

Analysis

4. Order 2 Rule 15 of the Civil Procedure Rules, which provides for striking out of pleadings states as follows:

Rule 15

“(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.



- (2) No evidence shall be admissible on an application under sub rule (1)(a) but the application shall state concisely the grounds on which it is made.”

a) Whether the Defence and Counterclaim should be struck out and judgment entered against the Defendant.

5. It was the Applicant’s case that the Defendant’s Defence is without merit, and does not raise any reasonable defence to the Plaintiff’s claim. That the Defendant has merely denied the Plaintiff’s claim without providing any substantive or credible evidence to refute the claim. In addition, the Defendant’s Counterclaim does not raise a legitimate or arguable cause of action. A Counterclaim must disclose a reasonable cause of action and must not be merely speculative or frivolous. It must be pleaded with clarity and substance, ensuring it raises legitimate issues for determination.
6. In contrast the Defendant argued that the Plaintiff’s Application is premised on the mistaken assumption that the Defendant has admitted the claim. The position is that the Defendant expressly disputes the Plaintiff’s performance under the contract. It contends that the machinery supplied was unfit for its intended purpose, suffered excessive downtime causing operational losses, and required costly repairs and servicing exceeding its purchase price. The Defendant further maintains a Counterclaim for breach of contract to be set off against any sums alleged to be due. That all of these raise complex factual issues that can only be resolved through the production of evidence, including expert testimony on mechanical performance and causation of loss.
7. As it has been held time and again the striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. The Court of Appeal in the case of Blue Shield Insurance Company Ltd vs. Joseph Mboya Oguttu [2009] eKLR restated these principles as follows:

“The principles guiding the Court when considering such an application which seeks striking out of a pleading is now well settled. Madan J.A. (as he then was) in his judgment in the case of D.T. Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 Rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows:-

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”

8. In instances where the pleading sought to be struck out is a Defence as herein, the Courts have held that where the Defendant raises prima facie triable issues, he/she should be allowed to defend his or her case. As to what constitutes a triable issue, Blacks’ Law Dictionary, 9th Edition at page 1644, provides as follows:

“triable issue” is deemed to mean “subject or liable to judicial examination and trial” whilst “the trial” has been given to mean “a formal judicial examination of evidence and determination of legal claims in an adversary proceeding.”



9. A Statement of Defence is said to raise a reasonable defence if that defence raises a prima facie triable issue. In the case of Olympic Escort International Co. Ltd. & 2 Others –vs- Parminder Singh Sandhu & Another [2009] eKLR, the Court of Appeal held that for an issue to be triable, it has to be bona fide. The Court stated as follows:

“It is trite that, a triable issue is not necessarily one that the defendant would ultimately succeed on. It need only be bona fide.”

Does the Defence and Counterclaim raise bona fide triable issues?

10. According to the Defendant the Defence and Counterclaim raise bona fide triable issues and are neither scandalous nor vexatious. They held the position that the Plaintiff’s Application is an attempt to short-circuit the trial process and deny the Defendant a fair hearing. The issues raised—such as breach of contract, failure of performance, and economic loss—are serious and require expert evaluation and full evidence.
11. In consideration of the above, it is the Court’s considered view that the Counterclaim raises a triable issue with regard to the Plaintiff’s breach of its obligations as referenced in paragraph 7 of the Defence. The issue of breach is one that requires proof through a trial. For that reason, the Defence cannot by any stretch of imagination be referred to as a sham,
12. In light of the above the Court declines to strike out the Defence and Counterclaim.

Determination

13. The Plaintiff/Applicant’s application by way of a Notice of Motion dated 13th June 2024 is hereby dismissed.
14. The costs thereof are awarded to the Defendant/Respondent.
15. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 22ND DAY OF JANUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Obuya for the Plaintiff/Applicant.

N/A for Miss Impano for the Defendant/Respondent.

Mr. Peter Wabwire - Court Assistant.

