



REPUBLIC OF KENYA
IN THE PRINCIPAL MAGISTRATE'S COURT AT LAMU
CIVIL SUIT NO. E002 OF 2025.
GULF ENERGY HOLDINGS
LIMITED.....PLAINTIFF/APPLICANT
-VERSUS-
ABOUD SAID KHALIFA.....
DEFENDANT

RULING.

(On the application dated 25th November 2025)

A. BACKGROUND.

- 1)** The application dated 25/11/25 brought under Order 2 Rule 15 (c)(d) of the Civil Procedure Rules, Section 1A,1B,3A of the Civil Procedure Act (Cap 21) Laws of Kenya and all enabling provision of the law seeks for the following orders;
 - a) That this court be pleased to strike out the statement of defence filed by the defendant herein and enter judgment as against the defendant in favour of the plaintiff as prayed in the plaint.**
 - b) Costs of the application and the main suit be borne by the defendant.**
- 2)** The application is based on the 6 grounds on the face of the application and supported with the affidavit of the plaintiff/Applicant sworn on 25/11/2025.

- 3) The application is opposed vide a replying affidavit of Aboud Said Khalifa sworn on 13th January 2026.
- 4) The summary of the grounds in support of the application is that the defendant is well and truly indebted to the plaintiff in the sums claimed in the plaint and was so indebted at the commencement of the suit. The defence as is will prejudice, embarrass or delay the fair trial of the matter and that the defence was filed out of time.
- 5) The application is opposed as stated. The main grounds in opposition are that the application is an abuse of the process and meant to unfairly drive the defendant from the seat of justice, striking out is a defence is a draconian measure and that the defence was filed within time in actual sense the same having been filed within 12 days and that there is no request for judgment in the event the same was filed out of time
- 6) I have considered the application, the supporting grounds and those in opposition. I have also considered submissions by parties and the decisions relied on.

B. ISSUES FOR DETERMINATION.

- 7) The following issues commend themselves for determination by this court.
 - a) **Whether the application dated 25th November 2025 should be allowed.**
 - b) **Whether costs should be awarded and to who.**

C. ANALYSIS AND DETERMINATION.

- a) **Whether the application dated 25th November 2025 should be allowed.**
- 8) The applicant has moved this court under Order 2 rule 15 of the Civil Procedure Rules to strike out the respondent's defence. The rule provides that a party may at any stage of proceedings apply to strike out pleadings for disclosing no reasonable cause of action; being scandalous, frivolous or vexatious; for being prejudicial or embarrassing or for being an abuse of the court process.

- 9)** The applicant's main argument is that the defence does not disclose any reasonable defence known in law and that the defence contains mere denials and that the defence was filed out of time.
- 10)** From the onset, the respondent avers that the defence was filed well within time and in fact 12 days after appearance was entered. I have looked at the CTS and I note the following. The claim was first served on 27/10/2025 via email by Eliud Sianga a process server. The claim was again served on 6/11/2025 via whatsapp by Counsel Daniel Nzeki. The memorandum of appearance was then filed on 13/11/2025 and the defence thereafter on 25/11/2025.
- 11)** From the record, I take the view that service was done on 2 occasions. I however take issue with the first service on the simple reason that there is no proof that the email belongs to the defendant and that in my view informed the 2nd service which was duly acknowledged and evidence of the number proved by an mpesa message. For all intents and purposes I am convinced by the 2nd service done on 6/11/2025.
- 12)** Given that finding, the memorandum of appearance and defence having been filed on 13/11/2025 and 25/11/2025 it is clear and I agree with the defendant that the defence was filed within time and as such I dismiss the assertion that the defence was filed out of time.
- 13)** Now coming to the issue as to whether the defence is frivolous and abuse of the process of the court. I have perused the defence filed and in my view paragraphs 5,6,7 and 8 contained mere denials but at paragraph 4 thereof the defendant avers that it fulfilled all his obligations which arose as a result of the contract. The plaintiff in its claim avers otherwise.
- 14)** In order for the court to determine whether the defendant fulfilled its obligations or not, evidence has to be called, examined and cross examined before a decision is made as to who was at fault and what orders can issue. This is what is usually referred to as a triable issue which need not succeed.
- 15)** The jurisdiction to strike out pleadings is discretionary and must be exercised judicially. This is the position ably advanced in the case

of **Postal Corporation of Kenya v I .T Inamdar & 2 Others** [2004] 1 KLR 359,

“the court stated that the law is now well settled that if the defence filed by a defendant raises even one bona fide triable issue, then the defendant must be given leave to defend.”

16) In **Olympic Escort International Co. Ltd. & 2 Others v. Parminder Singh Sandhu & Another** [2009] eKLR, the court opined that a triable issue is not necessarily one that the defendant would ultimately succeed on but it need only be bona fide.

17) From the defence it is clear that a triable issue is contained at paragraph 4 of the defence where the defence asserts he fulfilled all his obligations and hence not at fault that the defence should be given an opportunity to canvass.

18) Similarly, in **D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Another** [1980] eKLR, Madan JA, stated:

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.

19) I agree with the Respondent and with the several findings of the superior courts on this issue which are instructive and binding to this court that it would be a draconian step by this court to strike out the defence and as I have stated hereinabove.

20) Aforegoing it cannot be gainsaid that striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham which is not the case herein as stated hereinabove. See the Court of Appeal in **Blue Shield Insurance Company Ltd vs. Joseph Mboya Oguttu** [2009] eKLR cited with approval in the case of **Michael Kalani Muatha v Kyalo Mwikya & another** [2022] eKLR

21) Applying the principles in the decisions cited above to the present case and the application before this court, it is clear that the application is not one for allowing.

b) Whether costs should be awarded and to who.

22) The basic rule on attribution of costs is that costs follow the event. It is also well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case(application).

23) The defendant opposed the application and being the successful party in the circumstances, he is awarded costs of the application. Such costs to abide the outcome of the suit.

D. CONCLUSION AND DISPOSITION.

24) The application dated 25th November 2025 is not merited and it is hereby dismissed with costs to the Defendant/Respondent.

25) The costs shall abide the outcome of the suit.

26) Orders accordingly.

DATED, DELIVERED AND SIGNED AT LAMU LAW COURT THIS..25th .DAY OF ..February..2026.

**F.M. MULAMA
RESIDENT MAGISTRATE**

In the presence of;

Ms. Amal H/B for Ms.Nafula for the Defendant/Respondent.

Mr. Daniel Mutunga for the plaintiff/ Applicant.

Daniel Damise---C/A