

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CIVIL CASE NO. E001 OF 2025

HUMAMO KENYA LIMITED
PLAINTIFF

VS

GARISSA WATER AND SEWERAGE
COMPANY.....DEFENDANT

RULING

1. The genesis of this suit herein arose from the fact that the Plaintiff moved this court via a Plaint dated 25.02.2025 wherein it sought for orders that:
 - a) **The sum of Kshs. 25,777,266.68 as pleaded in paragraphs 3(i-iv), 6,7,9 and 10 herein above.**
 - b) **Interest at 14% p.a. on (a) above from 04.04.2022 until payment in full.**
 - c) **Costs of the suit.**
 - d) **Any other relief that the court may deem just and fit to grant.**

2. The crux of the matter is that, on diverse dates, the Defendant contracted the Plaintiff vide several Local Purchase Orders requesting the Plaintiff to supply fuel to the Defendant's motor vehicles and in return the Plaintiff issued delivery notes to the Defendant who acknowledged receipt thereof. That the total amount outstanding debt legally and lawfully owed to the Plaintiff is the total sum of Kshs. 25,777,266.68. It was averred that despite demand having been made and Notice of Intention to Sue

given, the Defendant has failed and/or neglected to heed the Plaintiff's demand to the Plaintiff's detriment.

3. The Defendant filed a Statement of Defence dated 21.09.2025 denying all the allegations contained in the plaint and put the Plaintiff to strict proof. The Defendant denied being indebted to the Plaintiff in the sum claimed or at all. It stated that any alleged supplies made to it were irregular and contrary to the provisions of the **Public Finance Management Act, 2012**, the **Public Procurement and Asset Disposal Act, 2015**, and the **Garissa County Water Management Act, 2018**.
4. The Defendant further stated that any Local Purchase Orders relied upon by the Plaintiff, if they ever existed, were either not issued by authorized officers or without proper approval, authority, or budgetary allocation. The Defendant, therefore, required strict proof of the alleged supply of goods, delivery notes, invoices, acceptance, and acknowledgment of receipt.
5. The Defendant denied the particulars of indebtedness pleaded in the plaint and stated that any payments made to the Plaintiff were made in good faith on account of verified deliveries and not as an acknowledgment of the sums claimed. It further stated that the amounts claimed were unverifiable, inflated, and unsupported by proper documentation, including delivery notes, invoices, inspection and acceptance certificates, and reconciliation statements.
6. The Defendant averred that as a public entity and custodian of public funds, it was bound by statutory obligations to ensure that

no payments were made unless supplies were properly verified, inspected, approved, budgeted for, and confirmed as delivered in accordance with the law. It stated that any alleged non-payment did not arise from default but from the Plaintiff's failure to subject its claims to mandatory verification and audit processes, which were safeguards required before public funds could be lawfully disbursed. The Defendant contended that making payment without such verification would amount to an illegal charge on public resources and a breach of statutory duty.

7. It emphasized that the sums claimed were substantial amounts of public money that could not lawfully be paid without prior reconciliation, verification, and approval in line with statutory safeguards governing public expenditure.
8. The Defendant indicated that it would raise a preliminary objection at the hearing on several grounds *inter alia*; the Plaintiff's claim was statute-barred under the **Public Authorities Limitation Act**, that the alleged contracts offended mandatory procurement laws, and that the contracts were unenforceable for lack of proof of budgetary allocation and approval under the **Public Finance Management Act, 2012**. The Defendant also stated that the court lacked jurisdiction to hear the suit, as the claim was premature and misconceived, and that the Plaintiff had failed to exhaust statutory, contractual, and internal dispute resolution mechanisms, thereby invoking the doctrine of exhaustion.
9. Finally, the Defendant denied the allegation that the Plaintiff had suffered any loss as alleged and denied the Plaintiff's claim in its

entirety. It denied liability for the sums claimed, interest, and costs, and prayed that the plaintiff's suit be dismissed with costs.

10. The Defendant's statement of defence caused the filing of a motion dated 16.12.2025, subject of this court's determination wherein the Applicant moved this court seeking for orders that:

- i. Spent.**
- ii. This Honourable Court be pleased to strike out the Defendant's Statement of Defence dated 21.09.2025.**
- iii. Judgment be entered for the Plaintiff against the Defendant in the sum of Kshs. 22,777,266.68/-.**
- iv. Costs of this application and generally for this suit be awarded to the Plaintiff.**

11. The application was supported by the affidavit of Abdulkadir Hussein Mohamed who deponed that vide Local Purchase Orders issued to the Plaintiff by the Defendant and delivery notes made to the Defendant by the Plaintiff, the Plaintiff supplied fuel for the Defendant's motor vehicles consequences whereof, the Defendant declined to pay the amount due. That the Plaintiff through his advocate on record wrote a demand letter dated 21.08.2023 demanding payment in the sum of Kshs. 25,777,266.68 in vain.

12. The Plaintiff reiterated that the Plaintiff through its advocates on record instituted a legal suit through a plaint dated 25.02.2025 seeking relief for the sum of Kshs. 25,777,266.68/- thus prompting the Defendant to pay the Plaintiff a partial payment as follows: Cheque No. 003383 dated 08.05.2025, Kshs.

200,000/-; Cheque Number 003649 dated 17.07.2025, Kshs. 200,000/-; Cheque Number 0033503 dated 20.08.2025, Kshs. 300, 000/-; Cheque Number 003672 dated 23.09.2025, Kshs. 300,000/- and RTGS dated 08.12.2025, Kshs. 2,000,000/-.

13. That the outstanding debt legally and lawfully owed to the Plaintiff by the Defendant is the balance of Kshs. 22,777,266.68/-. That the Statement of Defence of the Defendant dated 21.09.2025 does not disclose any reasonable defence in law against the Plaintiff.
14. As a response, the Defendant filed Grounds of Opposition dated 20.02.2026 stating that the application was misconceived and that the same deserved being struck out. That the defence raised serious, weighty and *bona fide* triable issues including but not limited to, the legality and enforceability of the alleged contracts, compliance with the **Public Procurement and Asset Disposal Act, 2015**, compliance with the **Public Finance Management Act, 2012**, verification and audit of the alleged supplies, statutory limitation under the **Public Authorities Limitation Act**, and the jurisdiction of the court, including the applicability of the doctrine of exhaustion. It was submitted that even a single *bona fide* triable issue was sufficient to warrant a full trial and that such issues could not properly be resolved summarily.
15. The Respondent further submitted that the application was procedurally defective, as it improperly invoked **Order 2 Rule 10** while seeking relief contemplated under **Order 2 Rule 15**. It was

also stated that the Applicant contravened **Order 2 Rule 15(2)**, which expressly prohibits the admission of evidence in applications grounded on certain limbs of the rule, by filing and relying on a supporting affidavit and annexures. The Respondent argued that this violation rendered the application fatally defective.

16. It was also submitted that the Applicant improperly relied on negotiations and communications made on a without-prejudice basis, which were privileged and inadmissible and could not lawfully form the basis of an application for striking out. The Respondent further stated that the alleged partial payments relied upon by the Applicant did not amount to an unequivocal admission of liability, as they were expressly pleaded as payments made in good faith for verified deliveries and not in acknowledgment of the sums claimed.
17. The Respondent emphasized that the defence expressly challenged the jurisdiction of the court on grounds including statutory limitation, non-compliance with procurement laws, non-exhaustion of statutory and contractual dispute resolution mechanisms, and prematurity of the suit. It was submitted that jurisdiction was a threshold issue going to the root of the proceedings and could not be defeated through an interlocutory application aimed at summarily shutting out the Respondent.
18. The Respondent further submitted that striking out the defence would unjustly and prematurely deny the Respondent the right to be heard on the merits, contrary to **Article 50** of the

Constitution. It was stated that striking out pleadings was a drastic and draconian remedy that should only be exercised in the clearest of cases, which the present matter did not meet. The Respondent maintained that the issues raised by the Applicant were matters properly canvassable through a Reply to Defence and during the trial.

19. In conclusion, the Respondent submitted that the application amounted to an abuse of the court process and was intended to circumvent a full hearing of the substantive issues raised in the defence. The Respondent urged the court, to dismiss the application with costs and allow the matter to proceed to full trial.

20. I have considered the application herein together with the response thereof. The only issue for determination is whether the defence herein raises triable issues. **Order 2, rule 15** of the **Civil Procedure Rules** provides that;

(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 **subrule (1)(a)** but the application shall state concisely the grounds on which it is made.

(3) So far as applicable this rule shall apply to an Originating Summons and a Petition.

21. The Applicant is alleging that the defence herein is a sham as it does not raise any triable issues as the contract for the supply of fuel to the Defendants has not been challenged in view of the available LPOS and deliveries for the supply of the said product. That by honouring part payment is proof enough of the admission of the claim hence a waste of judicial time in litigating what is already admitted.

22. The Respondents on the other hand, contended that, part payment was made on without prejudice basis and that the contract in question was tainted with deficiencies in terms of non-compliance with procurement laws and lack of jurisdiction by this court.

23. It is trite that a court can strike out a defence which does not raise triable issues nor disclose any reasonable cause of action or simply being a mere denial; amounts to an abuse of the court process or a waste of judicial time. The power to strike out a pleading in this case a defence, is a discretionary one which must be exercised with extreme caution and sparingly so as to achieve the constitutional imperative under **Article 50(1)** that

every person has a right to have any dispute heard before a competent court, body or tribunal.

24. In the case of **Ramji Megji Gudka v Alfred Morfat Omundi Michira and 2 others (2005) eKLR**, the Court held that, the power to strike out pleadings must be sparingly exercised and only exercised in the clearest cases. Similar position was held in the case of **DT Dobie and Company (Kenya) LTD v Muchina (1982) KLR1** where the Court held that, a 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.

25. Having filed a defence in this case, the court gave directions on how the case was to proceed. However, on 22-5-2025 parties informed the court that they were engaged in negotiations to settle the matter out of court. The court gave them an opportunity and fixed the matter for mention on 17-07-2025. On that day, no consent was entered. On 22-9-2025, counsel for the Respondent told the court that his client was willing to settle the claim but not at once. Counsel informed the court further that his client had engaged the County Government to assist in paying part of the claim. Counsel further confirmed that they had made part of the claim.

26. The court gave the Defendant more time to record a consent but all in vain. The Defendant despite making part payment, have raised serious issues touching on the veracity of

the actual amount due and owing, the jurisdiction of this court and non-compliance with procurement laws. These are weighty issues which cannot be overlooked considering the colossal amount involved. Making part payment can signify part admission of the claim and not the whole of it.

27. Considering the serious issues raised in the defence, it is only fair to find that the defence herein has raised serious triable issues and it is not a mere denial. In the circumstances, I am inclined to give parties an opportunity to exhaust their legal rights to be heard and a decision be made on merit. The Plaintiff will not suffer prejudice by the matter being heard and be determined on merit. To that extent, the application is dismissed. Parties to appear before the presiding judge for directions on the hearing of the main suit. Costs in shall be in the cause.

Dated, signed and delivered virtually this **16th** day of **April 2026**

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J.N.ONYIEGO
JUDGE