

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL APPEAL MISC E631 OF 2021

**STEPHEN OWINO T/A
S O OWINO & ASSOCIATES ADVOCATE
.....APPELLANT**

VERSUS

**BRIAN YONGO.....1ST
RESPONDENT**

**HARIT SHETH ADVOCATES2ND
RESPONDENT**

JUDGMENT

1. There are two applications which are the product of a decision by the lower Court that prompted this appeal. The first application is for the striking out of defence for several reasons which I shall analyze in order to determine this appeal. The Applicant filed a lengthy supporting affidavit and raised a raft of issues. One of the issues is that he was not represented by the 1st defendant(responded) and disputed how a consent was implemented. He insinuates conspiracy between the 1st Defendant and the 2nd defendant and went ahead to allege that the 2nd defendant was duped by the 1st defendant. Without going further, it is trite clear that this is case that must go to full trial. The Applicant appears to have

fagged out trial issues in his supporting affidavit. The defendants have a right to reply to the allegations contained in the supporting affidavit especially on the issue of implementation of the consent and allegations of conspiracy- and this can only be ventilated during full trial. The consequence of allowing this application is tantamount to condemning the defendants unheard and so the lower court was correct in dismissing the application dated the 3rd day of June 2025.

2. The 1st defendant simultaneously filed an application to strike the plaint and went ahead to raise the issue of consent that the Applicant referred in his motion which was dismissed by the lower Court. It is clear that the issue of consent need attention in order to arrive at justice. This therefore means that parties should be allowed to proceed to full trial. I have also looked at the Plaint and the Defence and noted that this is a matter that must go to full trial.
3. The conclusion of the above is that this appeal is dismissed. Each party shall bear own costs

DATED DELIVERED VIRTUALLY AND SIGNED ON THIS 7TH DAY OF MAY 2026.

L. P. KASSAN

JUDGE