



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. CASE NO. 1549 OF 2014**

**MARGARET NGINA KAMAU.....APPLICANT**

**VERSUS**

**CHRISTOPHE KARANJA MUCHAI.....1<sup>ST</sup> DEFENDANT**

**MARGARET NJERI KARANJA.....2<sup>ND</sup> DEFENDANT**

**RULING**

Coming up before me for determination is the Plaintiff/Applicant's Notice of Motion dated 5<sup>th</sup> March 2015 in which she seeks an order striking out the Defendant/Respondent's Statement of Defence and judgment be entered as prayed in the Plaintiff.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff, Margaret Ngina Kamau, sworn on 5<sup>th</sup> March 2015, in which she averred that on or about 28<sup>th</sup> September 2013 the Defendants acknowledged owing her the sum of Kshs. 9,700,000/- and pledged to liquidate it by making payments of Kshs. 800,000/- by the end of February, June and October every successive year commencing February 2014 until the debt is liquidated in full. She added that any late payment was to attract a penalty of 10% of the outstanding debt. She averred further that the Defendants have no Defence in this suit and the same is only meant to delay this trial and to embarrass her. In those circumstances, she prayed for this court to strike out the Defence and proceed to grant orders as sought in the Plaintiff.

The Application is contested. The 1<sup>st</sup> Defendant, Christopher Karanja Muchai, filed his Replying Affidavit sworn on 16<sup>th</sup> October 2015 in which he averred that he has a good and meritorious defence which raises triable issues and is not intended to delay the trial as alleged by the Plaintiff/Applicant. He blamed the Plaintiff for withholding their title deed to the suit property to date which defeated their effort to get finance by way of a loan from a Bank to pay the Plaintiff. He added that since they were running a school business on the suit property and in fear of their business being ruined, they were coerced by duress to enter into the Agreement dated 28<sup>th</sup> September 2013 to admit an unfair and unjust debt which has no basis. He stated that this issue would only be proved at the main trial.

The issue I am called upon to determine is whether or not to strike out the Defence filed by the Defendants on the ground that in the Agreement entered into between the Plaintiff and Defendants dated

28<sup>th</sup> September 2013, the Defendants admitted owing the Plaintiff/Applicant the sum sought for in the Plaint. The applicable law is to be found in **Order 2 Rule 15(1)** of the **Civil Procedure Rules, 2010** which states as follows:

**“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;**
- 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.”**

Going by the above provisions, I have no doubt that this court has power at any stage of the proceedings, to strike out a pleading, including a plaint or defence. However, in what circumstances can the court properly exercise such power? In the case of **Sunday Principal Newspaper Limited [1961] 2 ALL E.R. 758**, the principles for striking out were expressed thus,

***“It is established that the drastic remedy of striking out a pleading or part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to discloses no arguable case. Indeed it has been conceded before us that the rule is applicable only in plain and obvious cases....”***

Looking at the submissions of the parties, the main issue of contention is the validity of the Agreement dated 28<sup>th</sup> September 2013 entered into between the Plaintiff and the Defendants in which the Defendants appear to have acknowledged owing the Plaintiff the sum of Kshs. 10,670,000/- comprising of the purchase price for the suit property being Kshs. 9,700,000/- and the 10% of the same being the penalty for late payment. Both parties concede that this agreement was indeed entered into. The Plaintiff on her part wants this court to take that agreement as an admission of liability on the part of the Defendants which should form the basis for striking out the Defence. On their part, the Defendants contend that they were coerced to enter into that agreement owing to the fact that they run a school business on the suit property and they were afraid of the same being disrupted. They contend that the agreement is therefore invalid and should not be relied upon to strike out their Defence. The Plaintiff did not respond to this issue in any way.

In my view, the issue of the validity of the Agreement dated 28<sup>th</sup> September 2013 is a triable issue that should be ventilated at a full trial where parties may adduce evidence to enable the court to arrive at a well informed decision on this issue. I therefore do not consider this suit as appropriate for the striking out of the Defence filed herein by the Defendants. To that extent therefore, this Application is hereby dismissed. Costs shall be in the cause.

**DELIVERED AND DATED IN NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER 2016.**

**MARY M. GITUMBI**

**JUDGE**