



Ogweno v Modern Coast Coaches Limited (Employment and Labour Relations Cause E837 of 2021) [2024] KEELRC 534 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 534 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E837 OF 2021**

BOM MANANI, J

MARCH 7, 2024

BETWEEN

MARCEL AUJA OGWENO CLAIMANT

AND

MODERN COAST COACHES LIMITED RESPONDENT

RULING

1. The instant application seeks to strike out the suit against the Respondent on the ground that it discloses no reasonable cause of action. The application is supported by an affidavit sworn by one Christine Mufutu, the Respondent's Operations Manager.
2. The Respondent contends that the Claimant defrauded it of over twenty two million Kenya Shillings whilst serving as its (the Respondent's) IT Manager. It (the Respondent) avers that when the Claimant was summoned to a disciplinary session over the matter, he failed to turn up. Further, after the Claimant was charged in court over the alleged theft, he offered to settle the matter out of court. In the premises, the Respondent argues that the instant claim is without basis and ought to be struck out.
3. The Claimant has opposed the application. He denies that he was served with a notice to show cause as alleged. He denies that he was invited for a disciplinary session contrary to the assertion by the Respondent.
4. The Claimant denies that he had a hand in the alleged loss of funds by the Respondent. In effect, he avers that he has a reasonable cause of action against the Respondent.



Analysis

5. Order 2 rule 15 (1) of the [Civil Procedure Rules](#) allows a party to an action to move the court to strike out a pleading on various grounds. The rule provides, in part, 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 defense 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.”
6. Order 2 rule 15 (2) proscribes the presentation of evidence to support an application that is brought under Order 2 rule 15(1) (a). It provides as follows:-

“ 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.”
7. The rationale for this provision is that whether a pleading discloses a reasonable cause of action or defense is a matter that is self-evident from a cursory look at it. Therefore, one need not present evidence to demonstrate that the pleading is bereft of a reasonable cause of action or defense. Because of this requirement, a party who moves the court to strike out a pleading under Order 2 rule 15 must specify under which sub-rule of rule 15(1) that he has invoked the court’s jurisdiction.
8. The instant application seeks to strike out the claim on the ground that it does not disclose a reasonable cause of action. Essentially, the Applicant has invoked the ground that appears as ground (a) in the grounds under Order 2 rule 15 (1) above. Yet, in the body of the application, the Applicant quite strangely asserts that it has moved the court under Order 2 rule 15 (1) (b), (c) and (d) which as seen above are not anchored on the presence or absence of a reasonable cause of action or defense.
9. The Applicant cannot ask the court to strike out the suit for absence of a reasonable cause of action under Order 2 rule 15 (1) (b), (c) and (d). It can only do so under Order 2 rule 15 (1) (a). Therefore, the instant application is defective.
10. What is more, despite the law expressly stating that one is not entitled to present evidence when he applies to strike out a pleading for want of a cause of action or defense, the Applicant has done the contrary by filing affidavit evidence to support its application. This is not acceptable.
11. Importantly, striking out of pleadings is always considered as a measure of last resort. The court must not strike out pleadings unless they are irredeemably hopeless ([Kenol Kobil Ltd v David Mugo Ndumia & 2 others](#) [2019] eKLR).
12. What the Applicant raises as grounds to support its application to strike out the claim are essentially matters that it should canvass in its defense to the action. These are matter which the court will consider during the full trial of the cause.

Determination

13. The upshot is that the application dated 22nd May 2023 is devoid of merit.
14. Accordingly, it is dismissed with costs to the Claimant.



DATED, SIGNED AND DELIVERED ON THE 7TH DAY OF MARCH, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

