



**Compland Company Limited v Theuri & another (Land Case
E155 of 2023) [2024] KEELC 7316 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7316 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E155 OF 2023
LN MBUGUA, J
OCTOBER 30, 2024**

BETWEEN

COMPLAND COMPANY LIMITED PLAINTIFF

AND

REBECCA WACHINGA THEURI 1ST DEFENDANT

BONIFACE MAVHARIA NJUGUNA 2ND DEFENDANT

RULING

1. The Plaintiff's application dated 20.2.2024 is for determination. They seek orders that the statement of defence of the 1st defendant be struck out for being frivolous and vexatious, that the 2nd Defendant's statement of defence dated 17.1.2024 be also struck out or there be judgment entered against him on admission. Further, they pray that judgement be entered against the Defendants as prayed in the plaint with costs.
2. The application is premised on grounds on its face and on the supporting affidavit sworn on 20.2.2024 by Samuel Karonji. He avers that the 1st Defendant's statement of defence dated 5.1.2024 is disingenuous, untruthful and designed to disparage the proceedings before the court.
3. That further, the 2nd Defendant's statement of defence amounts to an admission of the contents of the plaint save for denial of liability and/or joint liability with the 1st Defendant.
4. That the Plaintiff's claim is founded on an agreement for sale of parcel L.R Nairobi Block 237/273, where the Plaintiff was a purchaser while Defendants were the vendors of which the Plaintiff paid a deposit of ksh.10 million.
5. He avers that the Defendants had initially charged the suit property to NCBA Bank and the Plaintiff paid a redemption amount of ksh. 6,831,118.45 to discharge the suit property. That due to the fact that the suit property was undergoing the process of conversion of title and which exercise took long



past the initial completion date contemplated in the agreement for sale, there was need to vary the completion date which the 1st Defendant willfully agreed to.

6. He avers that in breach of the express terms of the agreement between them, the 1st Defendant refused to execute transfer forms after her attempt to renegotiate the purchase price for the suit property failed.
7. The application is opposed by the 1st Defendant vide her replying affidavit sworn on 24.5.2024 where she avers that the statement of defence dated 5.1.2024 discloses reasonable and triable issues being issues of threats, coercion, duress and undue influence exerted by the Plaintiff's director which should be considered by the court.
8. That she has also raised the issue of non-disclosure and concealment of material facts as well as the issue of freedom to contract.
9. The application is not opposed by the 2nd Defendant.
10. The Plaintiff filed submissions dated 17.7.2024 where they contend that the issues of duress and coercion pleaded by the 1st Defendant are untruthful and fabricated, hence they don't raise any triable issues. To this end, the case of Mohammed Hassim Pondor & Another v Summit Travel Services Limited & 4 others [2011] eKLR is relied upon. Further, the case of KCB Bank Limited v Suntra Investment Bank Ltd [2015] eKLR, Eldo City Limited v Corn Products Kenya Limited and Another [2013] eKLR as well as the case of African Cotton Industries Limited v Rural Development Services Limited [2021] eKLR have been proffered to submit that a sham defence cannot raise triable issues.
11. The case of Ideal Ceramic Limited v Suraya Property Group [2017] eKLR as well as the case of Synergy Industries Credit Limited v Oxyplus International Limited & 2 Others [2021] eKLR are cited to submit that admissions made in the pleadings are binding on the party who makes them and that the other party need not adduce further evidence with respect of the admitted facts.
12. The 1st Defendant's submissions are dated 26.7. 2024 where she argues that her issues cannot be determined summarily by way of an application. To this end, the case of Saudi Arabian Airlines corporation v Premium Petroleum Co. Ltd [2014] eKLR amongst other cases is relied upon.
13. The issues falling for determination are;
 - a. Whether the 1st Defendant's defence should be struck out.
 - b. Whether judgment on admission should be entered against the 2nd Defendant.
 - c. Whether judgement should be entered against the Defendants as prayed in the plaint.
14. On the 1st issue, while this court has power to strike out pleadings, it ought to exercise caution in doing so. In Blue Shield Insurance Company Ltd vs. Joseph Mboya Oguttu [2009] eKLR, it was held that;

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”
15. After careful consideration of the facts placed before this court, I find that the 1st defendant's statement of defence raises triable issues. It is trite law that, a triable issue is not necessarily one that the defendant would succeed on, it need only be bona fide. There are issues raised concerning duress and undue influence which ought to be tried in light of the fact that at the time of sale of the suit property, the 1st and 2nd Defendants were married but are now separated and have divorce proceedings.



16. On the 2nd issue, this court has discretion to enter judgment on admission under Order 13 rules 1 and 2 of the Civil Procedure Rules. In *Express Automobile Kenya Limited v Kenya Farmers Association Limited & Another* [2020] eKLR, the Court stated that;

“In law, an admission should reflect a conscious and deliberate act of the person making it, showing an intention to be bound by it. As for the court, the power to enter judgment on admission is not mandatory or peremptory; it is discretionary. The court is bound to examine the facts and prevailing circumstances keeping in mind that a judgment on admission is a judgment without trial which permanently denies a remedy to the sued party by way of an appeal on merits.”

17. The court has considered the 2nd Defendant’s defence. Despite admitting paragraphs 17-23 of the plaint, the 2nd Defendant denies breaching the sale agreement by refusing to complete the transaction. I therefore find that this is an issue that removes the 2nd Defendant’s defence from being termed as an admission of the allegations raised in the plaint.

18. On the 3rd issue, the Plaintiff has in its pleadings sought a determination that the Defendants breached the express terms of the sale agreement entered between them. This issue can only be determined after considering evidence raised by the rival parties.

19. In the end, I find that the application dated 20.2.2024 is not merited, the same is hereby dismissed. Costs thereof shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Njeri for Applicant

Waitere for 1st Defendant

Court assistant: Vena

