



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 975 OF 2012

JOHN KAMAU MBURU.....CLAIMANT

VS

PROGRAM FOR APPROPRIATE TECHNOLOGY

IN HEALTH (PATH).....1ST RESPONDENT

SOCIETY FOR WOMEN AND AIDS (SWAK).....2ND RESPONDENT

RULING

1. The 2nd Respondent's application brought by way of Notice of Motion dated 5th December and filed in Court on 8th December 2014 seeks the following orders:

- a) That the Claimant's claim be struck out;
- b) That the Claimant be investigated by the Criminal Investigations Department for forgery;
- c) That the Claimant be ordered to pay the costs of this case.

2. The application which is supported by the affidavit of Prof Elizabeth Ngugi is based on the following grounds:

- a) That the suit before the Court is fatally defective for the reason of fraud;
- b) That there are no triable issues in this suit;
- c) That the suit is frivolous, vexatious and an abuse of the Court process

3. In the supporting affidavit sworn by Prof Elizabeth Ngugi on 5th December 2014, it is deponed that upon the request of the 1st and 2nd Respondents on 13th June 2013, the Court ordered that the contract of employment produced by the Claimant be subjected to forensic examination. Pursuant to this order, the Forensic Documents Examiner produced a report dated 20th June 2013 in which he concluded that in his opinion *“the signatures were NOT made by the same author.”*

4. The 1st Respondent supports the application while the Claimant opposes it. In his Grounds of

Opposition filed on 2nd February 2015, the Claimant states that the application is made in bad faith. He adds that it would be unjust for his claim to be struck out on the basis of the Forensic Documents Examiner's report since he has adduced other evidence in support of his case. Further, the Claimant disagrees with the opinion rendered by the Forensic Documents Examiner.

5. Striking out a suit is an extreme action available to the Court and as held by **Ougo J** in ***Jane Wairumu Turanta Vs Githae John Vickery & 2 Others [2013] eKLR*** this summary remedy should be granted with commensurate caution. A court of justice should do everything to preserve cases that are placed before it and should only strike a suit out when it is clearly and evidently an abuse of the court process.

6. I have examined the Claimant's claim and without going into its merits at this stage have formed the opinion that even if the disputed documents were to be expunged from the record, there is still a remnant of the Claimant's case worthy of this Court's time and attention. That dispenses with the first prayer for an order to strike out the Claimant's claim.

7. The Court is yet to make its ruling on the opinion of the Forensic Documents Examiner's report. The second prayer for investigation of the Claimant by the Criminal Investigation Department is therefore premature and misguided at this stage.

8. In the upshot the 2nd Respondent's application is dismissed with costs to the Claimant.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF MARCH 2015

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JUDGE

Appearance:

John Kamau Mburu (Claimant in person)

Miss Aluvale for the 1st Respondent

Mr. Ngugi for 2nd Respondent