



**GC Residential Limited v Directline Assurance Company Limited & another;  
Kenya Revenue Authority (Interested Party) (Environment & Land Case  
E134 of 2022) [2023] KEELC 488 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 488 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E134 OF 2022  
EK WABWOTO, J  
JANUARY 26, 2023**

**BETWEEN**

**GC RESIDENTIAL LIMITED ..... PLAINTIFF**

**AND**

**DIRECTLINE ASSURANCE COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DIRECT LINE INVESTMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KENYA REVENUE AUTHORITY ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the 2<sup>nd</sup> defendant's notice of motion dated June 14, 2022. The application seeks the following orders:
  - i. That the suit by the Plaintiff against the 2<sup>nd</sup> Defendant be struck out for want of disclosing a cause of action against it.
  - ii. That the costs of this application be borne by the Plaintiff.
2. The Application is premised on nine (9) grounds outlined in support of the application.
3. The Application was supported by the 1<sup>st</sup> Defendant but was opposed by the Plaintiff. In opposition to the application, the plaintiff filed a Replying Affidavit sworn by Ravindranath Santosh Kumar on 11<sup>th</sup> July 2022 and grounds of opposition dated on the same date.
4. The application was canvassed by both written and oral submissions that were made by counsel for the parties. During the plenary hearing of the application, Learned Counsel Mr. Muthui and Ms. Kamau



made oral submissions on behalf of the Plaintiff while Learned Counsel Ms. Orange submitted on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

5. It was the Defendants submission that the Plaintiff filed herein discloses no cause of action against the 2<sup>nd</sup> Defendant and thus ought to be struck out as against the 2<sup>nd</sup> Defendant. It was also argued that no prayers have been sought as against the 2<sup>nd</sup> Defendant and it would be unjust to keep in court a party without no cause of action against them.
6. It was contended that the agreement between the Plaintiff and the 1<sup>st</sup> Defendant does not include the 2<sup>nd</sup> Defendant at all and that the 2<sup>nd</sup> Defendant has been dragged to the suit on account of the fact that 1<sup>st</sup> Defendant intended to have them as their nominee. According to the 2<sup>nd</sup> Defendant, it was argued that this does not vary the contract between the Plaintiff and the Defendant as it does not change the terms of payment neither does it go to the root of the contract and whoever that the 1<sup>st</sup> Defendant appointed as a nominee assumes no contractual obligation to the vendor. Reliance was made to the case of *Savings & Loan (K) Limited vs Kanyenje Karangatia Gakombe & Another* (2015) eKLR in support of the said position.
7. Counsel for the Plaintiffs while in opposition the said application submitted that the Plaintiff discloses reasonable cause of action against both defendants and further that the 2<sup>nd</sup> Defendant's introduction to the transaction was orchestrated by the 1<sup>st</sup> Defendant a position which will be demonstrated during trial. Further submitted that the issue of spousal consent having been raised by the defendants was immaterial and cannot amount to a triable issue. It was also argued that there is express written correspondences from the 1<sup>st</sup> Defendant (through its Legal Counsel) asking the Plaintiff to prepare 18 leases in favour of the 2<sup>nd</sup> Defendant and the stamp duty in respect to the same has not been paid. It was contended that to allow the 2<sup>nd</sup> Defendant's removal from the suit would be tantamount to condemning the Plaintiff unheard since 18 of the leases in respect of which stamp duty has not been paid and in the name of and signed by the 2<sup>nd</sup> Defendant.
8. It was the Plaintiff's contention that the Plaintiff raised serious triable issues and that before striking out the same, the Court ought to look at the pleadings and documents on record and consider whether it is worth a hearing. Counsel further referred to paragraphs 5, 6, 9, 10 and 11 of the 2<sup>nd</sup> Defendant's Defence and reiterated that it is undeniable that there exists a cause of action against the 2<sup>nd</sup> Defendant. The court was urged to dismiss the application and allow the matter to proceed for full trial.
9. I have considered the application, the supporting grounds and those in opposition. I have also considered the oral and written submissions by parties and the decisions relied on. The applicant has moved this court under order 2 rule 15 (1) (a) of the Civil Procedure Code and sections 1A, 1B and 3A of the *Civil Procedure Act* to strike out the Plaintiff's suit against the 2<sup>nd</sup> Defendant. The rule provides that a party may at any stage of proceedings apply to strike out pleadings for disclosing no reasonable cause of action; being scandalous, frivolous or vexatious; for being prejudicial or embarrassing or for being an abuse of the court process.
10. The jurisdiction to strike out pleadings is discretionary and must be exercised judicially. In *Postal Corporation of Kenya v I.T Inamdar & 2 Others* [2004] 1 KLR 359, the court stated that the law is now well settled that if the defence filed by a defendant raises even one bona fide triable issue, then the defendant must be given leave to defend.
11. In *Olympic Escort International Co. Ltd. & 2 Others v. Parminder Singh Sandhu & Another* [2009] eKLR, the court opined that a triable issue is not necessarily one that a party would ultimately succeed on but it need only be bona fide.



12. In *The Co-Operative Merchant Bank Ltd. v George Fredrick Wekesa* (Civil Appeal No. 54 of 1999) the Court of Appeal stated:
- “Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action or which is otherwise an abuse of the process of the court”.
13. In *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* (Civil Appeal No. 35 of 2000) the same court expressed itself thus:
- “A plaintiff (defendant) is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant (plaintiff) can demonstrate shortly and conclusively that the plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial...It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved”.
14. Similarly, in *D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, Madan JA, stated:
- “No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it”.
15. In the instant case, it is evident that the Plaintiff raise triable issues against the 2<sup>nd</sup> Defendant that must be determined by this court. The 2<sup>nd</sup> Defendant filed its Defence dated 14<sup>th</sup> June 2022 in response to the Plaintiff filed herein. The Defence was in response to the triable issues raised by the Plaintiff against the 2<sup>nd</sup> Defendant, these issues were in response to the privity of contract between the Plaintiff and the 2<sup>nd</sup> Defendant in respect to the lease over the 18 apartments, whether the 2<sup>nd</sup> Defendant executed and transmitted 18 leases to the Plaintiff via its legal representatives and ultimately whether the leases are binding to the 2<sup>nd</sup> Defendant and whether the stamp duty costs have been paid in order to have the leases registered.
16. Applying the principles in the decisions cited above to the present circumstances and the application before this court and further having perused the Plaintiff and considering the reliefs sought therein, it is evident that striking out the same without hearing the parties would be draconian since the same discloses triable issues that can only be determined after trial. Taking all the above into account, I do not consider this to be a proper case for striking out the Plaintiff’s suit against the 2<sup>nd</sup> Defendant.
17. The upshot of the above is that the Notice of Motion dated 14<sup>th</sup> June 2022 is devoid of merit. It is accordingly dismissed with costs to the Plaintiff.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY  
2023**

**E. K.WABWOTO**

**JUDGE**

**In the presence of: -**

**Ms. Kamau h/b for Mr.Muthui for the Plaintiff.**

**Ms. Achieng h/b for Ms. Orengo for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.**

**Mr. Nyandieka h/b for Mr. Opondo for the Interested party.**

**Court Assistants; Caroline Nafuna and Philomena Mwangi.**

