



Nyachae (Suing as Attorney for and on Behalf of Martha Mwangi Nyachae) v Nyachae & 4 others; Sansora Group Limited & 6 others (Interested Parties) (Commercial Case E160 of 2023) [2025] KEHC 1131 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1131 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E160 OF 2023
PM MULWA, J
FEBRUARY 27, 2025

BETWEEN

MICHAEL MORAGIA NYACHAE PLAINTIFF
SUING AS ATTORNEY FOR AND ON BEHALF OF MARTHA MWANGO NYACHAE

AND

GRACE WAMUYU NYACHAE 1ST DEFENDANT
LEON NYANDUSI NYACHAE 2ND DEFENDANT
ROBERT MWANGI NDUNG’U 3RD DEFENDANT
CREDIT BANK LIMITED 4TH DEFENDANT
BANK OF BARODA (K) LIMITED 5TH DEFENDANT

AND

SANSORA GROUP LIMITED INTERESTED PARTY
SANSORA LIMITED INTERESTED PARTY
SIMBI INVESTORS LIMITED INTERESTED PARTY
SANSORA INVESTMENTS LIMITED INTERESTED PARTY
SANSORA BAKERY LIMITED INTERESTED PARTY
KABANSORA LIMITED INTERESTED PARTY
SANSORA OIL MILLS LIMITED INTERESTED PARTY



RULING

1. This ruling concern three applications seeking the striking out of the Plaintiff's suit. The first two applications filed by the 1st, 2nd and 3rd Defendants are dated 28th April 2023 and 16th June 2023 respectively. The third application dated 16th May 2023 is filed by the 4th Defendant.
2. The first application is a Chamber Summons dated 28th April 2023, brought pursuant to Section 1A, 1B and 3A of the Civil Procedure Act, as well as Order 2 Rule 15 (1) & (2), and Order 19 Rules 3 & 9 of the Civil Procedure Rules 2010. This application seeks to strike out the Plaintiff's suit. It is grounded on the reasons set out in the motion, and supported by the affidavit of Leon Nyandusi Nyanchae, sworn on 28th April 2023.
3. The second application is a Notice of Motion dated 16th June 2023. This application seeks to restrain the firm of M/s Kenyariri & Associates Advocates from acting for, or representing, the interested parties and further seeks to strike out the firm's Notice of Appointment dated 20th April 2023. Additionally, it seeks an order for costs.
4. The application is supported by the affidavit of Leon Nyandusi Nyanchae, sworn on 16th June 2023. In his affidavit, Mr. Nyanchae asserts that the firm of Kenyariri & Associates is not properly on record, as no resolution was passed by the interested parties to appoint the firm. Instead, by the board resolution dated 15th May 2023, the interested parties appointed the firm of Mohammed Muigai LLP as their legal counsel.
5. The third application, filed by the 4th Defendant, is a Motion dated 16th May 2023, and seeks the following orders:
 - i. That the Plaintiff's claim against the 4th Defendant be struck out in its entirety, as it discloses no cause of action against the 4th Defendant.
 - ii. That the Plaintiff's plaint be struck out for failure to be accompanied by a valid verifying affidavit drawn and sworn in accordance with Order 4 Rule 1(2) of the Civil Procedure Rules.
 - iii. That costs be awarded to the 4th Defendant.
6. This application is supported by the grounds set out in the motion and the affidavit of Wainaina Francis Ngaruiya, sworn on 16th May 2023.
7. In response to the applications the Plaintiff filed grounds of opposition dated 14th June 2023 as well as a replying affidavit sworn on 19th June 2023. The Plaintiff contends that the matter before the court concerns allegations of forgery committed by the 1st and 2nd Defendants. She claims that these Defendants continue to engage in criminal activities, specifically by siphoning funds from the interested parties' bank accounts. Plaintiff further asserts that the purported minutes appointing the firm of Mohammed Muigai LLP to represent the interested parties were signed solely by the 1st and 2nd Defendants, without the involvement of other family members. According to the Plaintiff, this is part of a scheme by the 1st and 2nd Defendants to continue unlawfully appropriating funds from the interested parties' accounts.
8. The applications were canvassed through written submissions. In this regard, the 1st and 2nd Defendants filed their submissions dated 11th July 2024, while the 3rd Defendant filed submissions dated 12th July



2024. The 4th Defendant on the other hand, filed their submissions dated 17th July 2024. The Plaintiff in turn, filed their submissions on 24th July 2024.

Analysis and determination

9. I have carefully reviewed the applications, the supporting and opposing affidavits and the submissions filed by the respective parties in this matter. The central issues that require determination are as follows:
- i. Whether the Plaintiff's suit should be struck out due to a defective verifying affidavit;
 - ii. Whether the firm of M/s. Kenyariri & Associates is properly on record as the Plaintiff's counsel.
 - iii. Whether there is a cause of action established against the 4th Defendant.
10. The Applicants seek to strike out the Plaintiff's suit on the grounds that the verifying affidavit, sworn on 17th April 2023, is defective. Specifically, they argue that it is improper for Michael Nyachae to execute an affidavit on behalf of the Plaintiff when the deponent of the affidavit is Martha, and it is argued that such an affidavit is illegal. However, the Plaintiff counters this claim by asserting that it granted power of attorney to the deponent of the verifying affidavit, which renders the affidavit valid in accordance with the law.

11. Order 4 Rules 1(2) and (6) of the Civil Procedure Rules 2010 provides as follows:

“ 4.

- (2) The Plaint shall be accompanied by an affidavit sworn by the Plaintiff verifying the correctness of the averments contained in Rule 1(1)(f) above.
- (3) ...
- (4) ...
- (5) ...
- (6) The court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule.”

12. In Kenya Agricultural Research Institute (KARI) v Fatah Ali, Chairman Isahakia Self Help Group & Another [2011] eKLR the Court held as follows:

“In my view, the plaintiff has to demonstrate that this suit is properly filed and not just brought by a busy body or an officer who has no authority. Such authority should be exhibited. None was exhibited. But as to whether this suit should be struck out just because the authority is not exhibited, I find that to be a drastic measure to be taken at such an early stage. This matter has just been filed by a party who believes they are aggrieved. It is a dispute over land. This court has a duty to do substantive justice to the parties by considering the overriding objectives of the Civil Procedure Act as provided under Sections 1A & 1B of the Civil Procedure Act.”



13. The Court has discretion to strike out defective pleadings. However, striking out a pleading is a drastic measure, which should only be resorted to in plain cases. 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.”

14. Similarly, in *The Court of Appeal in Crescent Construction Limited v Kenya Commercial Bank Limited* [2019] eKLR reiterated the discretionary nature of the power to strike out pleadings. The Court emphasized:

“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rules of natural justice require that the court must not drive away any litigant, however weak their case may be, from the seat of justice. This is a time-honoured legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against them is a non-starter.”

15. In this matter, the Plaintiff seeks redress for alleged fraudulent activities involving the shareholding of the interested parties and the 1st and 2nd Defendants. The Plaintiff’s claim presents a triable issue, and this Court finds that the matter ought to proceed to trial. Striking out the suit based on a defective verifying affidavit would not serve the interests of justice. I find that the defective verifying affidavit is not fatal to the entire suit, and the Court retains the discretion to grant the Plaintiff an opportunity to file a complaint affidavit within a specified time.

16. A perusal of the record indicates that the Plaintiff has filed an amended plaint dated 13th July 2023, which is accompanied by a verifying affidavit sworn by Michael Moragia Nyachae. This affidavit, filed on 13th July 2023, confirms the correctness of the amended plaint. Thus, the defect in the original verifying affidavit has already been rectified by the Plaintiff’s filing of the amended plaint and affidavit.

17. I am further supported in this view by the provisions of Article 159 (2) of *the Constitution* of Kenya, which commands courts to administer substantive justice without undue regard to technicalities. Given the Plaintiff’s opportunity to amend its pleadings and rectify any deficiencies, this Court finds that the application to strike out the suit based on a defective verifying affidavit lacks merit.

18. In *Coast Development Authority v Adam Kazungu Mzamba & 49 others* [2016] eKLR, the Court of Appeal stated:

“... Article 159 (2) (d) demands that justice shall be administered without undue regard to technicalities...”

19. In light of the foregoing, I find the application dated 28th April 2023 is bereft of merit.

20. The next issue for determination is whether the firm of Messrs. Kenyariri & Associates is properly on record as the legal representative for the interested parties. The Plaintiff contends that the said firm was duly appointed to represent the interested parties in this matter. However, the 1st and 2nd Defendants



argue that the firm of Mohammed Muigai LLP was appointed via a board resolution passed by the interested parties, and as such, the firm of Messrs. Kenyariri & Associates is not properly on record.

21. Upon reviewing the evidence, it is noted that the Plaintiff initially appointed the firm of Messrs. Kenyariri & Associates to represent the interested parties. This is supported by the documents on record, which show that the appointment was made by the Plaintiff in accordance with their instructions.
22. However, the 1st and 2nd Defendants argue that the appointment of Messrs. Kenyariri & Associates was superseded by a subsequent board resolution passed by the interested parties. According to the Defendants, the interested parties appointed the firm of Mohammed Muigai LLP as their legal representatives in a board resolution dated 15th May 2023.
23. A perusal of the minutes of the board meeting reveals that the resolutions were passed in the absence of the Plaintiff. The Plaintiff's absence raises a critical issue as to whether the Plaintiff, who initially appointed Messrs. Kenyariri & Associates, was properly consulted or involved in the decision to replace them with the firm of Mohammed Muigai LLP. The question to ponder is if the Plaintiff's interests were not adequately represented or considered in this decision-making process, then the appointment of Mohammed Muigai LLP might be deemed improper, and Messrs. Kenyariri & Associates would remain the properly appointed counsel.
24. I am alive to the fact that the management of the interested parties is at stake in these proceedings, and this management is being actively contested by the Plaintiff. The Plaintiff's contention is that the 1st and 2nd Defendants, along with the other parties involved, are engaging in fraudulent activities, including the manipulation of bank accounts and improper changes to the signatories, all of which are at the core of the dispute. As such, the Plaintiff's interest in ensuring proper legal representation and the legitimacy of decisions concerning the management of the interested parties is of paramount importance.
25. I am of the view that the appointment of Messrs. Kenyariri & Associates remains valid until such time as it can be clearly demonstrated, through proper documentation or consent from the Plaintiff, that the firm of Mohammed Muigai LLP was duly appointed by the interested parties with the involvement of all relevant stakeholders, including the Plaintiff.
26. In light of the foregoing I find the application dated 16th June 2023 is without merit and the same is dismissed with costs.
27. On the last issue, the 4th Defendant has filed an application seeking the striking out of Plaintiff's plaint because it does not disclose a cause of action against it. Order 2, Rule 15 of the Civil Procedure Rules provides that the Court has the power to strike out pleadings for various reasons, including where the pleading does not disclose a reasonable cause of action or defence in law. It is therefore necessary for the court to examine whether the Plaintiff's plaint presents a valid cause of action against the 4th Defendant.
28. As outlined in Order 2, Rule 15(2) of the Civil Procedure Rules, applications to strike out pleadings for failure to disclose a reasonable cause of action should not be supported by evidence. The Court must confine itself to the pleadings alone in determining whether a reasonable cause of action is disclosed.
29. The Plaintiff contends that the 4th and 5th Defendants assisted the 1st and 2nd Defendants in altering the signatories of the interested parties, thus enabling the latter Defendants to withdraw funds from the interested parties' bank accounts without the consent of other beneficiaries. However, a careful review of the pleadings reveals that the Plaintiff has not established a clear connection between the actions of the 4th Defendant and the alleged wrongdoing by the 1st and 2nd Defendants.



30. The pleadings lack specific allegations or evidence that would indicate the 4th Defendant's involvement in or assistance with the alleged fraudulent activities. there is no legal basis for keeping the 4th Defendant as a party to the suit. Therefore, the plaint must be struck out.
31. In light of the foregoing I find notice of Motion dated 16th May 2023 partially succeeds only to the extent of striking the suit against the 4th Defendant. In the circumstances, the Plaintiff's suit against the 4th Defendant is struck out for failing to disclose a reasonable cause of action.
32. These are the final orders of the court:
 - i. The Notice of Motion application dated 28th April 2023 is dismissed with costs.
 - ii. The application dated 16th June 2023 is without merit and is dismissed with costs.
 - iii. The suit against the 4th Defendant is dismissed for failing to establish a cause of action with costs to the 4th Defendant.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Dr. Kenyariri for Plaintiff

Mr. Ouma & Ms. Kala for 1st & 2nd Defendants

Mr. Angwenyi for 3rd Defendant

Mr. Waiyaki & Ms. Makena for 4th Defendant

Court Assistant//: Carlos

