



Ringsview Apartments Limited v KCB Bank Kenya Limited & 4 others (Civil Case E069 of 2023) [2024] KEHC 4025 (KLR) (Civ) (24 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E069 OF 2023

DAS MAJANJA, J

APRIL 24, 2024

BETWEEN

RINGSVIEW APARTMENTS LIMITED PLAINTIFF

AND

KCB BANK KENYA LIMITED 1ST DEFENDANT

ARTHUR IGERIA T/A IGERIA & NGUGI ADVOCATES 2ND DEFENDANT

BENSON NGUGI T/A IGERIA & NGUGI ADVOCATES 3RD DEFENDANT

DAVID NJOROGE T/A IGERIA & NGUGI ADVOCATES 4TH DEFENDANT

JILLIAN NDIRANGU T/A IGERIA & NGUGI ADVOCATES .. 5TH DEFENDANT

RULING

Introduction and Background

1. Before the court for determination is the Chamber Summons dated 31.07.2023 brought by 2nd, 3rd, 4th and 5th Defendants (“the Advocates”) pursuant to the provisions of Order 1 Rule 14 and Order 2 Rule 15 (1) (a) of the *Civil Procedure Rules*, 2010. They seek that the suit filed by the Plaintiff against them be struck out or in the alternative, they be struck off from these proceedings for reasons that it does not disclose any reasonable cause of action against them. The Plaintiff has opposed the application through the replying affidavit sworn on 24.11.2023 by its director, Dr. Mbira Gikonyo. The parties have also filed written submissions in support of their respective positions.
2. Before I deal with the application, a synopsis of the Plaintiff’s case is necessary. The Plaintiff avers that it was the registered proprietor of the property known as Land Reference No. 4858/11 Kileleshwa (“the suit property”). On 25.07.2018, it took up a mortgage from the 1st Defendant (“the Bank”) to



- facilitate construction of apartments for Kshs. 90,000,000.00. The mortgage facility was secured by a charge dated 31.10.2018 over several apartments. The firm of Igeria & Ngugi Advocates prepared the charge instrument.
3. The Plaintiff claims that on or about the 14.07.2021, the Bank violated the confidential nature of their relationship by holding a meeting with unauthorized third parties' unknown to the Plaintiff. That the Bank shared and gave copies of the Plaintiff's confidential banking information and documents to third parties to facilitate the filing of a lawsuit against it namely: Nairobi Environment and Land Court Suit No. 283 of 2021; *Rivalane Limited & 3 Others v KCB Bank Limited & 2 Others* and that affidavits have been sworn in the said suit acknowledging that various banking documents of the Plaintiff were provided by the Bank. The Plaintiff thus claims that on account of the breach of confidentiality and the Bank's illegal, unlawful and unauthorized disclosure of confidential banking information, the said third parties obtained an injunction restraining the Plaintiff from dealing with the suit property in any way and caused the Plaintiff to suffer damage and costs defending the suit.
 4. The Plaintiff further claims that the Advocates, who were the parties' advocates in the mortgage transaction are guilty of conflict of interest as well as breach and abuse of advocate/client privilege and that they passed confidential information to third parties who were not parties to the transaction and supported the suit No. 283 of 2021 by among other things financing or contributing to the costs of the said suit which has greatly jeopardized the ability of the Plaintiff's to meet its obligations to the Bank. That unknown to the Bank, its Advocate is a director in Asir Holdings Limited, one of the parties (plaintiff) in suit No. 283 of 2021 and that this conflict of interest no doubt prejudiced the interests of the Bank as the 2nd Defendant Advocate is hell-bent to secure his own personal interests at the expense of his client, the Bank.
 5. The Plaintiff avers that the Advocates wrote to the Bank seeking to have securities held by the Bank released without the knowledge of the Plaintiff, the beneficial owner of the securities. That in so doing they were purporting to represent the Plaintiff, while refusing to disclose their conflict of interest and the 2nd Defendant Advocate's personal interest essentially jeopardizing the securities held by the Bank and thus exposing the Plaintiff and the Bank to loss. The Plaintiff claims that it was compelled to write to the Bank to allay the fears that its securities were at risk and that the 2nd Defendant Advocate signed legal charge securitization documents fraudulently as the Company Secretary of the Plaintiff and Ringsview Apartments Management Limited. That this is fraudulent as the 2nd Defendant's Advocate has not and has never been a company secretary nor a director of the Plaintiff and Ringsview Apartments Management Limited. Consequently, the Plaintiff avers that the Bank documents allowing the charge are therefore a nullity in law as they were signed by someone who had no authority or capacity to do so. That by this apparent conflict of interest, breach and abuse of advocate/client privilege the 2nd Defendant Advocate did not render objective and/or unbiased advice to the Bank which ultimately prejudiced the Plaintiff to whom the Bank advanced a mortgage facility.
 6. The Plaintiff states that the Advocates prevailed on the Bank which has unwittingly acceded to support their cause notwithstanding their ulterior motives and bad faith by the apparent breach and abuse of advocate/client privilege, which is grossly prejudicial to the Bank's interests and portends economic losses of great proportions. As such, the Plaintiff prays for judgment against the Defendants jointly and severally for a declaration that the Bank breached the duty of confidentiality owed to the Plaintiff, a declaration that the 2nd Defendant Advocate is guilty of conflict of interest and breach/abuse of advocate/client privilege, a declaration that the 2nd Defendant Advocate is guilty of professional misconduct and/or malpractice, Special damages in the sum of Kshs. 53,550,000.00, general damages for breach of the duty of confidentiality, general damages for breach of the duty to avoid conflict of interest and Costs of this suit.



7. In their application, the Advocates state that the suit discloses no reasonable cause of action against them. That they are not privy to the alleged sharing of confidential information relating to the Plaintiff nor is it indicated which third parties the alleged disclosure was made to hence the allegation that they disclosed the said confidential information to third parties is therefore unfounded. They state that in its suit, the Plaintiff purports to make claims against them on behalf of the Bank yet it lacks the locus standi to make such claims on behalf of the Bank.
8. The Advocates state that the plaint as drawn makes it impossible for them to file a substantive defence as they are strangers to the issues raised therein and cannot establish a basis for the same from the documents filed in alleged support of the claim. That unless the Advocates are struck out of the suit, they are likely to suffer irreparable damage by being forced to defend a suit in which there is no cause of action against them.
9. In response to the application, the Plaintiff depones that the Advocates are proper and/or necessary parties to the suit herein and their presence is necessary for the complete and effectual determination of the suit. That the application is devoid of merit as it does not meet the requisite threshold to warrant the Court to strike out the suit or strike out the Advocates from the suit. That the application is made in bad faith and is no more than an attempt to try and absolve the Advocates from liability, and that the same is unmerited and an abuse of the court process. It restates the averments in its plaint that I have highlighted above and urges the court to dismiss the application.

Analysis and Determination

10. I have gone through the application, the Plaintiff's reply and the parties' submissions. The main issue falling for determination is whether the suit against the said Advocates ought to be struck out for want of a cause of action. I do not think it is in dispute that under Order 2 Rule 15 of the Civil Procedure Rules ("the Rules"), the court has power to strike out pleadings on several grounds which includes striking out where the pleading in question does not disclose a reasonable cause of action.
11. Under Order 2 Rule 15(2), no evidence is admissible to support an application made under Order 2 Rule 15(1)(a) hence the court is limited to taking the facts set out in the plaint on the basis they are true and correct. The court cannot therefore have regard to the affidavits or documents filed together with the plaint. Thus, looking at the plaint alone can the court conclude that it does not disclose a cause of action?
12. As I understand it, the Plaintiff's case is hinged on an advocate/client relationship between it and the 2nd, 3rd, 4th and 5th Defendants. Although they have not filed their Statement of Defence, the Defendants deny such a relationship existed. In order to determine this fact, the court would have to look at the charge document and nature of the transaction which are outside the purview of the application. The thrust of the Plaintiff's case is that the Advocates breached this relationship by disclosing confidential information to third parties. Without more, this constitutes a valid cause of action.
13. I am aware of the general principle that the striking out of a pleading is a draconian act and that it should be circumspect in doing so unless there are clear grounds (see *D.T. Dobie & Company (Kenya) Ltd v Muchina* [1982] KLR 1). Based on this principle, I cannot at this stage say that the Plaintiff's suit is devoid of merit.
14. In the circumstances, I find that the 2nd, 3rd, 4th and 5th Defendants' application dated 31.07.2023 is devoid of merit. It is dismissed with costs to the Plaintiff. The Defendants shall file their defence within 14 days from the date hereof.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2024.



D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

