



REPUBLIC OF KENYA



**Mission for Essential Drugs and Supplies v Kirinyaga County Government & another (Commercial Case E178 of 2022) [2025] KEHC 2463 (KLR) (Commercial and Tax) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E178 OF 2022  
A MABEYA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**MISSION FOR ESSENTIAL DRUGS AND SUPPLIES ..... PLAINTIFF**

**AND**

**KIRINYAGA COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**THE COUNTY EXECUTIVE MEMBER, HEALTH & SANITATION**

**KIRINYAGA COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before Court is the application dated 18/9/2023 brought under section 1A, 1B and 3A of the *Civil Procedure Act* CAP 21, Order 2 rule 15(1)(a) of the *Civil Procedure rules* 2010. It seeks the striking out of the statement of defence dated 17/11/2022 and entry of judgment in favour of the plaintiff as prayed in the plaint.
2. In support of the Motion the applicant relied on the grounds set out on the face of the application. The plaintiff stated that the defendant filed a statement of defence dated 17/11/2022 which contained mere denials. That it had been filed four months outside the statutory time limit and that it failed to raise any reasonable cause of action.
3. The application was opposed by the defendant in a replying affidavit sworn by Carolyn Kinyua on 18/12/2023. It was contended that the suit was time barred and the respondent had raised a preliminary objection to that effect. That the application was not supported by a supporting affidavit thus was in contravention of section 51 of the Civil Procedure Rules 2010. It was the respondent's contention that he plaintiff had failed to demonstrate how the defence was in contravention of order 2 rule 15 of the *Civil Procedure Act*.



4. That the applicant had raised issues of fact and without a supporting affidavit the said allegations lack basis. It was stated that the defence raised the issue of whether the medical drugs were supplied by the plaintiffs. That where pleadings raise an arguable point they ought not to be struck out.
5. The application was canvassed by way of written submissions which I have considered.
6. The plaintiff submitted that the defendants could not dispute the delivery of goods since they had informed the Court on 2/10/2023 of a partial settlement of the claim. That if no goods were delivered, they did not have to make any partial payment. It was submitted that the defence had been filed four months outside the statutory time limit.
7. The defendants submitted that the partial payments were made on a without prejudice basis pending the determination on the exact amount owed. It was the defendants' submissions that the inherent jurisdiction to strike out pleadings should be used sparingly where the defence is unreasonable. Counsel submitted that the defendant did not deny owing the plaintiff but rather disputed the amount claimed by the plaintiff.
8. I have considered the pleadings, the submissions on record and the authorities cited. The main issue for determination is whether the statement of defence dated 17/11/2022 should be struck out and judgment entered in favour of the plaintiff as prayed in the plaint.
9. The applicant invoked order 2 rule 15(1) of the Civil Procedure rules which provides for striking out pleadings. 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.”
10. Similarly, in *Crescent Construction Co Ltd V Delphis Bank Limited*, [2007] eKLR, the Court of Appeal emphasized the need for a court to exercise its discretion with utmost care when faced with an application for striking out a suit as it is a draconian action which may have the consequences of slamming the door of justice on the face of one party without according it an opportunity to be heard.
11. The plaintiff moved the court seeking to strike out the statement of defence dated 17/11/2022. This application was premised on the ground that its claim for Kshs 47,100,925/- as against the defendant remained unpaid. The plaintiff stated that the defence contained mere denials and it did not disclose a reasonable cause of action. It was the plaintiff's contention that there were no triable issues and therefore the defence ought to be struck out.
12. The defendant on its part challenged the competency of the application before Court stating that it was defective for want of a supporting affidavit. The defendant further stated that the statement of defence raised the issue as to whether the plaintiff actually made supply of the goods.
13. With respect to the challenge on competency, it is evident that no affidavit was filed in support of the motion. Order 2 rule 15(2) of the Civil Procedure Rules is clear that in an application brought under this section, no evidence shall be admissible.



14. In *Susan Rokih v Joyce Kandie & 6 others* [2018] eKLR, the court held: -

“Order 2 rule 15 (2) makes it clear that applications seeking to strike out pleadings for not disclosing a reasonable cause of action or defence should not be supported by any evidence. All an applicant needs to do is to state concisely the grounds on which the application is premised. In applications of this nature, the court only looks at the pleadings only and cannot go beyond them in order to establish whether the impugned pleading raises a reasonable cause of action or defence. Consequently, the respondents claim that the two applications lack merit because they have not been supported by any affidavit falls by the way side and cannot avail the respondent.”

15. In this regard, I find that the application is competent and there was no need for the applicant to file a supporting affidavit.

16. The second issue raised is whether the statement of defence discloses a reasonable cause of action. In the plaint, the plaintiff's case is for the balance of the sums due from the defendants arising out of some medical supplies. The plaintiff argued that the defendants raised a total of 15 LPO'S for the supply and delivery of the assorted products.

17. In their defence, the defendants challenged the receipt or supply of quality and affordable health products and technologies. They further denied having raised any LPOS for drugs from the plaintiff.

18. In *Olympic Escort International Co. Ltd. & 2 Others vs. Parminder Singh Sandhu & Another* [2009] eKLR, the Court of Appeal held: -

“It is trite that, a triable issue is not necessarily one that the defendant would ultimately succeed on. It need only be bona fide.”

19. In the present case, it is clear that the issue between the parties is whether there was request, delivery and supply of goods. Further, there is challenge to the authenticity of the LPOS relied on. In this regard the Court finds that the defence raises triable issues and thus discloses a reasonable cause of action. The defendants conceded to the payment of Kshs 20,000,000 but the plaintiffs claim is that Kshs. 47,100,925/- has not been fully paid.

20. In *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.”

21. The jurisdiction to strike out pleadings is discretionary and the same must be exercised judicially. In this case, I find that the defendants have raised issues that require interrogation. The justice of the case is to allow the parties canvass those issues at a full trial as it would be unfair to condemn the defendants unheard.

22. In view of the foregoing, I find no merit in the application and the same is hereby dismissed with costs. It is so ordered.



**SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2025.**

**A. MABEYA, FCI ARB**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**F. GIKONYO**

**JUDGE**

