



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO. 166 OF 2017**

**STAR TOURS AND TRAVEL LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**KENNEDY GICHUHA CHEGE.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**DEBONAIR TRAVEL LIMITED.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The Plaintiff/Applicant herein took out the motion dated 23<sup>rd</sup> May, 2018 under Section 3A of the Civil Procedure Act, and Order 2, Rule 15 (1) (b) and (d) of the Civil Procedure Rules, seeking the following orders:

*i) THAT the Statement of Defence dated 10<sup>th</sup> October, 2017 be struck out.*

*ii) THAT judgment be entered in favour of the Plaintiff/Applicant as prayed in the plaint.*

*iii) THAT costs of the application and suit be awarded to the Plaintiff/Applicant together with interest at court rates.*

2. The aforesaid motion is supported by the grounds set out on the face thereof and the affidavit of **Joan G. Ngugi** sworn on 23<sup>rd</sup> May, 2018. The defendants opposed the motion by filing the replying affidavit of Kennedy Gichuha Chege on 24<sup>th</sup> July, 2018.

3. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against the application plus the respective submissions by the parties. The substantive prayers sought in the motion are that of striking out the joint statement of defense and for entry of judgment.

4. It is the plaintiff's argument that the defendants defence is scandalous, frivolous and vexatious and that it is intended to prejudice, embarrass or delay the fair trial of the suit and that it is an abuse of the court process.

5. The Plaintiff contended that the defence does not raise any triable issues and was of the view that the same is a mere denial.

6. The Defendants on their part maintained that their defence raises triable issues and hence, they stand to suffer prejudice if the same is struck out.

7. The court has considered the statement of defence and finds that the same raises triable issues. First is whether or not the 1<sup>st</sup> Defendant was wrongly enjoined to these proceedings. Secondly, whether or not the 1<sup>st</sup> Defendant guaranteed any documents as is claimed by the Plaintiff; and thirdly whether or not the Defendants owe the Plaintiff any monies.

8. It is not in dispute that the defence has been appropriately filed. It would be in the utmost interest of justice to grant the Defendants the opportunity of defending the suit. The court is convinced that to deny them such a chance would in effect amount to prejudice.

9. The Plaintiff similarly sought to have judgment entered in its favour. The prayer is dependent on whether or not the defence stands and since the court has declined to strike out the defence, then the prayer for summary judgment fails.

10. The upshot is that the motion dated 23<sup>rd</sup> May, 2018 lacks merit, it is dismissed with costs to the Defendant.

Dated, Signed and Delivered at Nairobi this 7<sup>th</sup> day of December, 2018.

**J.K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff/Applicant

..... for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents



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