



Case Number:	Civil Suit 129 of 2004
Date Delivered:	15 Dec 2004
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Ruling
Judge:	David Kenani Maraga
Citation:	Termco Tank Kenya Ltd v Nyoro Construction Co. Ltd [2004] eKLR
Advocates:	Mr. Mugo for the petitioner
Case Summary:	<b>[Ruling] - CIVIL PRACTICE AND PROCEDURE - pleadings – striking out of</b> – application for – applicant sought to strike out the pleadings of the respondent on the grounds that they were scandalous and frivolous – proof of – applicable principles – validity of order
Court Division:	Civil
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

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

**CIVIL SUIT 129 OF 2004**

**TERMCOTANK KENYA LIMITED ..... PLAINTIFF**

**- Versus -**

**NYORO CONSTRUCTION CO. LTD. .... DEFENDANT**

**R U L I N G**

On the 23<sup>rd</sup> August 2004, the plaintiff, in execution of the decree issued in this suit, caused to be attached various properties including motor vehicles, tractors and one grader (earth mover). On the 26<sup>th</sup> August 2004 Asphalt Concrete Company Limited filed a notice of objection to that attachment under Order 21 Rule 53 of the Civil Procedure Rules claiming the ownership of the attached properties and thereafter a chamber summons seeking the lifting of that attachment.

The plaintiff/decreed holder was not amused by those objection proceedings. On the 29<sup>th</sup> September 2004 it filed a chamber summons under Order 6 Rule 13(1) (b), (c) and (d) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking the striking out of the Objectors said chamber summons dated the 16<sup>th</sup> September 2004 on the grounds that:-

- “(a) the Objector’s application dated 16<sup>th</sup> September 2004 is frivolous, vexatious and scandalous**
- (b) The Objectors aforesaid application discloses no reasonable cause of action.**
- (c) The Objectors aforesaid application is purely aimed at prejudicing, embarrassing and delaying the execution process herein.**
- (d) The Objector’s aforesaid application is an abuse of the process of the court.”**

In support of the application Buxton Mugo the Accountant of the plaintiff company swore an affidavit in which he deponed, in addition to the above stated grounds upon which the application is based, the fact that the objector has not exhibited in its said application any document proving its ownership of any of the attached properties.

As proof that the Objector’s claim is frivolous, Mr. Mugo has annexed to his affidavit copies of the records from the Registrar of Motor Vehicles showing that motor tractor Registration Number KAP 612W and motor vehicle Registration Number KAD 721M being part of the attached properties are registered in the name of the defendant judgment debtor and not the Objector. The Objector has not filed any replying affidavit or grounds of opposition to the plaintiffs application.

A pleading is scandalous if it alleges indecent, offensive or improper motives against the opposite party which are unnecessary in the proof of the action pleaded. It is frivolous or vexatious when it lacks seriousness and tends to annoy. A frivolous claim is *ex post facto* vexatious as nobody can fail to be

annoyed by a baseless allegation against him. There is nothing scandalous in this application. The same, however, cannot be said about its seriousness.

I have perused the affidavit sworn on the 16<sup>th</sup> September 2004 by Richard Wamae in support of the Objector's said chamber summons. All that he has stated in that affidavit is that "... the said goods tractors and earth moving equipment belong to the Objector company but are only on hire to the defendant company as is the trade practice in the construction industry." The attached goods are registered properties with documents of ownership. He has not annexed thereto any document to prove the Objector's ownership of any of them. He has not annexed thereto any document in support of the allegation that they are on hire to the defendant company. All that he has annexed to the affidavit is a copy of the certificate of incorporation of the Objector Company which does not prove anything as the existence of the objector company is not in issue in this matter.

This is not a serious pleading. This is a frivolous and vexatious pleading which is also a total abuse of the court process filed purely to thwart or delay the plaintiff's effort to recover the decretal sum herein. In the circumstances I allow the plaintiff's application and hereby strike out the Objector's chamber summons dated 16<sup>th</sup> September 2004 with costs to the plaintiff to be paid by the Objector.

DATED and delivered this 15<sup>th</sup> day of December 2004.

D.K. Maraga

**JUDGE**



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