**Mpaka Road Development Ltd v Kana**

[2004] 1 EA 161 (CCK)

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of ruling:** 29 May 2001

**Case Number:** 318/00

**Before:** Ringera J

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Practice – Pleadings – Striking out pleadings as being frivolous, scandalous and vexatious – Order*

*VI, rule 13(1)(*b*) – Civil Procedure Rules.*

*[2] Tenancy – Concurrent tenancies in respect of the same premises – Whether concurrent tenancies*

*tenable in law.*

*[3] Tenancy – Whether allegation of concurrent tenancies in respect of the same premises is frivolous*

*and vexatious – Pleadings – Whether pleadings may be struck out for allegation of concurrent tenancies.*

*[4] Words and phrases – Frivolous, scandalous and vexatious, meaning of.*

**Editor’s Summary**

The Applicant who is the Plaintiff in the main suit, filed suit against the Defendant for arrears of rent.

The Defendant filed a defence and counterclaim. In the counterclaim the Defendant was joined by a

limited liability company, of which the Defendant was the director, as a co-Plaintiff. In the

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counterclaim, the two Plaintiffs claimed that the Plaintiff in the main suit had sent an auctioneer, who

was also joined in the counterclaim as a co-Defendant, to restrain the premises. The auctioneer had then

locked the doors to the premises, causing the co-Plaintiffs to lose business. The Second Plaintiff in the

counterclaim also pleaded that the distress was illegal and excessive.

The Plaintiff in the main suit filed his defence to counterclaim and applied under Order VI, rule

13(1)(*b*) and Order XXXV, rule 1 of the Civil Procedure Rules for striking out of the defence and

counterclaim and summary judgment. The Plaintiff averred that both the defence and counterclaim were

scandalous, frivolous and vexatious because they disclosed the existence of two concurrent tenancies

over the same premises.

**Held –** A matter would only be scandalous, frivolous and vexatious if it would not be admissible in

evidence to show the truth of any allegation in the pleading which is sought be impugned, for example,

imputation of character where character is not in issue. A pleading is frivolous if it lacks seriousness. It

would be vexatious if it annoys or tends to annoy. It would annoy or tend to annoy if it is not serious or

contains scandalous matter, irrelevant to the action or defence. A scandalous and/or frivolous pleading is

*ipso facto* vexatious.

There was nothing scandalous about the defence and counterclaim. The claim as to tenancy by the

First and Second Plaintiffs in the counterclaim connoted two simultaneous tenancies. There could not

have been concurrent tenancies in respect of the same premises and tenancies could not have existed in

the alternative. The pleading was frivolous and therefore vexatious.

The defence and counterclaim was struck out and judgment awarded to the Plaintiff in the original

suit. It was not necessary to consider the application for summary judgment. The cases cited below were

considered but not applied.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*DT Dobie v Muchina* [1978] LLR 9 (CAK)

*Shah Panachand and Co v Velji and another* [1969] EA 194

***United Kingdom***

*Wenlock v*