



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. E222 OF 2019

PANALPINA AIRFLOO BV.....PLAINTIFF

VERSUS

FLOWER CITY KENYA LIMITED.....DEFENDANT

RULING

1. By an application dated 15th October 2019, brought under the provisions of Sections 1A,1B and 3A of the Civil Procedure Act, Order 36 rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, the plaintiff is seeking for orders:

a) That judgement be and is hereby entered for the Plaintiff against the Defendant for the sum of Euro 818,061.31 together with interest thereon from date of filing suit until payment in full.

b) That the costs of this application and of this suit be awarded to the Plaintiff.

2. The application is based on the grounds that, the defendant is well and truly indebted to the Plaintiff for the sum of; Euros 818,061.31 together with interest thereon and more particularly as set out in the plaint. The Defendant was so indebted from 27th May 2019. Further, the Claim is for a liquidated sum and the Defendant has no reasonable defence to the suit. Therefore, it is just and fair that judgement be entered as prayed.

3. The application is further supported by the affidavit dated 17th June, 2019, by the Plaintiffs', managing director Rob de Vos. He avers that, all material times relevant to this suit, the plaintiff was engaged in providing freight services for various Kenyan products to various destinations throughout the world. The Defendant was one of the Plaintiff's customers for its flower products.

4. The agreement between the parties was in writing contained in or evidenced by various; House Airway Bills issued on the receipt of each consignment. Under the Airway Bills, the Plaintiff and Defendant are described as Carrier and Shipper respectively.

5. On diverse dates between 16th November 2018 and 15th May 2019, the Plaintiff carried the Defendant's consignment and issued invoices payable within 45 days from the date of each invoice. The Plaintiff subsequently sent various requests to the Defendant for payment of the amount of; Euro 818,061.31 but the Defendant failed, refused and or neglected to respond to the Plaintiff's requests for payment. That despite further demand made, the Defendant has not made the payment, hence the suit and/or the subject application.

6. The application was served as evidenced by an affidavit of service dated 29th October 2019, sworn by Martin Kiongo Kuria, who deposed that, he served the application and the supporting affidavit upon the firm of; Njoroge Kugwa & Co. Advocates located at Wande House, 2nd Floor, in Thika town. The same were acknowledged by the secretary, Ms Judy. However, there was no response filed in opposition to the application.

7. On the 21st November 2019, the application was heard in the absence of the Respondent though they were notified of the hearing date. The court then ordered the Plaintiff to file skeleton submissions

8. Be that as it were, I have considered the application on merit, though unopposed, and I find that, the Plaintiff has annexed to the affidavit in support of the application, statements of account in relation to the Respondents' account, indicating inter alia: the number of invoice, date, description of transaction, the due date, amount, balance and totals. The last entry shows a sum of Euros, 854,949.65. However, I note that the Plaintiffs' claims is for a sum of Euros; 818,061.31.

9. The provisions of order 36(1) of Civil Procedure Rules 2010, states; -

“(1) In all suits where a plaintiff seeks judgment for;

(a) a liquidated demand with or without interest; or

(b) the recovery of land, with or without a claim for rent or mesne profits, by a landlord from a tenant whose term has expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming

under such tenant or against a trespasser, where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or mesne profits.”

10. The claim herein is a liquidation sum, the Defendant has not filed any defence to the claim as pleaded vide the plaint dated 3rd July 2019. Thus, by not defending the application, the Defendant has not advanced any cause or reasonable cause that it should be considered to defend the suit. I therefore allow the application as prayed.

11. Those are the orders of the court.

Dated, delivered and signed in an open court this 28th day of April 2020

G.L. NZIOKA

JUDGE

In the presence of:

Mr. Kahura for the applicant

No appearance for the respondent

Hon. Opande -----DR/Court Assistant