



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 517 OF 2015

SUENG ENTERPRISES LIMITED.....PLAINTIFF

-VERSUS -

UCHUMI SUPERMARKETS LIMITED.....DEFENDANT

RULING

1. The plaintiff has asked the court to strike out the Defence and to enter judgement in favour of the plaintiff.
2. The plaintiff asserted that the defendant is truly indebted to it, in the sum of Kshs. 10,202,123.44.
3. The further assertion is that the Defence was evasive, inconsistent and failing to give rise to any triable issues.
4. The defence on record was described as a mere denial which was calculated to delay the just conclusion of the case. If anything, the defence was seen as nothing other than a tool intended to waste the court's time.
5. The reason why the plaintiff described the defendant as feigning ignorance, is that the breach of the contract was so evident that there was no basis for the stance adopted by the defendant.
6. As the defendant has submitted, the power of the Court to strike out a pleading is discretionary. It is obviously a draconian step and which the Court has held, time without number, that should only be resorted to in plain cases.
7. In the case of **THE CO-OPERATIVE MERCHANT BANK LIMITED Vs GEORGE FREDRICK WEKESA CIVIL APPEAL No. 54 of 1999** the Court of Appeal reiterated the following;

“Can it be said that the defence of the appellant against the allegation of negligence against it, is so hopeless as to have properly, formed the basis for denying it a trial? ?
8. The application before me was brought pursuant to Order 2 Rule 15 (1) (a) as read with Order 51 Rule 1 of the Civil Procedure Rules. Pursuant to sub-rule (2) of Rule 15, no evidence is admissible on an application made pursuant to sub-rule (1). It is for that reason that the plaintiff did not adduce any evidence to support the application.
9. I have already set out above, the concise grounds given by the plaintiff, for wanting to have the defence

struck out.

10. In determining the application I will need to answer the questions as to whether or not the defence was evasive, inconsistent or if it failed to raise any triable issues.

11. I would also explore the question as to whether or not the defendant can be deemed to have been feigning ignorance about the contract.

12. Ultimately, the defence could only be struck out if it was plainly unarguable.

13. In determining the application, the court is obliged to act cautiously, when it is borne in mind that at this stage the case had not reached trial. Therefore, the court must restrain itself from embarking upon the trial of the case.

14. In this case the defence has admitted paragraphs 1, 2, 3 and 4 of the plaint. That means that the defendant had admitted that from the year 2009, the plaintiff was engaged in the business of supplying the defendant with branded staff uniform, such as round neck T-shirts, shirts, skirts, blouses, bakers' uniform and others.

15. Secondly, by admitting paragraph 4 of the plaint, the defendant admitted that there was an Agreement between the parties that the plaintiff would invoice the Defendant for any goods which the plaintiff supplied to the Defendant. In turn, the defendant was to settle the invoices raised.

16. However, the defendant denied the particulars provided by the plaintiff, as constituting the goods which the plaintiff delivered to it, between December 2014 and July 2015.

17. Those particulars were provided in paragraph 5 of the plaint. They included the Purchase Orders; the Delivery Notes; the Invoice numbers; and the value of each invoice.

18. The total value of the invoices was Kshs. 10,202, 123.44/-. The Defence denied the contention that the plaintiff delivered the goods listed in the invoices and in the delivery notes.

19. The Defence also denied the contention that it had failed, neglected and/or refused to clear the outstanding amount owed to the plaintiff.

20. Whilst admitting that it received a Demand Notice from the plaintiff, the defendant denied owing the sums claimed.

21. In my considered opinion, the defence constitutes nothing more than a bare denial.

22. In **EFF KENYA LIMITED Vs. BUSTRACK LIMITED & ANOTHER**, Hccc No. 69 of 2005, the court noted as follows;

“The defendants merely deny owing that money. They don’t deny the existence of the contract for the supply of vehicle spare parts, nor that these were supplied. Their denial is therefore a general one which does not specifically traverse the allegations of fact in the statement of claim?.

23. Njagi J. concluded that the defence was a mere general denial which did not raise any triable issues. Accordingly, the defence was struck out.

24. In this case, the defendant had admitted that there was a contract between the parties, and that the defendant was to pay for the goods which the plaintiff invoiced it for, after the plaintiff had supplied the goods.

25. In the light of the fact that the plaint has disclosed particulars of Delivery Notes and Invoices, the

defendant ought to have been clear about that the aspects of the claim which it was denying. For instance, the defendant could have specified the particular invoice or delivery note which it was disputing.

26. When a defence fails to respond to specific aspects of the plaint, and only provides a generalized denial, the court is entitled to conclude, as I hereby do, that the defence was vague and evasive.

27. In **GEORGE P.B. OGENDO Vs. JAMES NANDASA & 4 OTHERS Hccc No. 91 of 2002**, (at *Kakamega*), G.B.M. Kariuki J. (as he then was) held as follows;

“Therefore, an evasive and vague defence from which the plaintiff cannot know what defence is being pleaded will normally be struck out on the ground that it is wanting in seriousness and tends to annoy. Gone are the days when liberty existed to engage in too many expedients in pleading to an extent that the pleadings did not show what line of defence was being pursued by the defendant?.

28. The Defence does not give rise to any triable issue.

29. I also find that the Defence lacks bona fides. I so find because the defendant definitely knows the facts which the plaint has put forth. Therefore, if the defendant had a legitimate answer to any one or more of the matters stated in the plaint, it would have answered each matter.

30. The defence obviously and plainly fails to disclose any reasonable defence that would warrant a trial.

31. I therefore strike it out, and I enter judgement in favour of the plaintiff as prayed for in the plaint.

32. The plaintiff is also awarded the costs of the application dated 12th February 2016.

DATED, SIGNED and DELIVERED at NAIROBI this 29 day of June 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Magina for Mrs. Maina for the Plaintiff

Miss Mwika for the Defendant

Collins Odhiambo – Court clerk.