



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 555 OF 2013

AQUVA AGENCIES LIMITED.....PLAINTIFF

VERSUS

PUT SARAJEVO ENGINEERING CO. LIMITED.....DEFENDANT

RULING

1. The plaintiff has requested the court to strike out the Defence, and to thereafter enter judgment in favour of the plaintiff as prayed for in the plaint.
2. It was the plaintiff's contention that the defence on record is a mere denial, which was only intended to delay the quick determination of the suit.
3. The plaintiff submitted that the defendant was truly indebted to the plaintiff. Indeed, the defendant is said to have paid a portion of the principal amount after it was served with summons.
4. According to the plaintiff, there was an express admission by the defendant that it owed the plaintiff the sum of Kshs. 7,800,783.40. Thereafter, the defendant is said to have paid Kshs. 500,000/-.
5. It was in those circumstances, that the plaintiff concluded that the defence on record can only have been intended to delay the finalization of this case.
6. The defendant was served with the application but it did not file any response to it.
7. The defendant also failed to attend court on the date when the plaintiff canvassed the application to strike out the defence. In the event, the application remains unchallenged.
8. I have perused the defence and I think that it is useful to set out herein the salient parts thereof. Those are as follows:

“2. *The Defendant denies the contents of paragraph 3 of the Plaint and puts the plaintiff to strict proof thereof.*

3. *The Defendant admits the contents of paragraph 5 of the plaint.*

4. *The Jurisdiction of this Honourable Court is admitted.*

5. *The Defendant denies each and every statement set out in the plaint as if the same were set out verbatim and traversed seriatim*".

9. In order to fully appreciate the assertions in the defence, it is necessary to point out that paragraph 5 of the plaint had stated that there were no other pending suit or any other previous proceedings over the subject matter of this suit.

10. Meanwhile, paragraph 3 of the plaint was in the following terms;

"3. The plaintiff's claim against the Defendant is for Kshs. 7,300,783.00 being the money due and owing for goods sold and delivered at the defendant's request and order, during the period 2012/13. Full particulars have been rendered and are well within the Defendant's knowledge".

11. In my considered view, a denial of the contents of paragraph 3 of the plaint is not useful to anybody. I so state because that defence does not indicate whether the defendant denies;

i) *owing the sum claimed; or*

ii) *having ordered for goods from the plaintiff; or*

iii) *receiving the goods from the plaintiff'; or*

iv) *that the order was made and the goods were*

delivered during the period 2012 – 2013; or

v) *that the full particulars were within the defendant's knowledge, as the plaintiff had rendered such particulars to the defendant; or*

vi) *each and every assertion in the plaint.*

12. A Defence ought to respond to the claims in a manner which makes it possible for the plaintiff and the court to fully appreciate the exact assertion in the claim which was either denied or admitted.

13. The Defence herein did not make it clear exactly what was being denied, and the reasons for any such denial.

14. It may have been more useful for the defendant to indicate if it was asserting that it had paid in full for the goods which were sold and delivered to it, if that were the position.

15. Or, if there had been no contractual relationship between the parties, the defendant should have said so, expressly.

16. Perhaps, the defendant did not receive the goods which it had ordered for, or the goods were not fit for the intended purpose, if either of those reflected the defendant's position on the claim.

17. By not being specific in its Defence, the defendant took the risk of having its defence branded as a bare denial.

18. The plaintiff has asserted, in the application, that the defendant is truly indebted to the plaintiff. In support of that contention, the plaintiff has exhibited a Demand Letter dated 13th September 2013.

19. The said letter demonstrates the accuracy of paragraph 4 of the plaint, in which the plaintiff

had said that a Demand Notice had been served upon the defendant.

20. The defendant responded to that letter, through their letter dated 20th September 2013. By that letter, the defendant acknowledged receipt of the Demand Notice for Kshs. 7,800,783.40. The defendant also made it clear to the plaintiff, that they had no dispute at all, concerning the outstanding amount.

21. The defendant explained that the inability to pay the debt arose from the fact that the Employer, (the Ministry of Roads) owed them the sum of Kshs. 967 million.

22. By the letter dated 20th September 2013, the defendant promised to pay the plaintiff as soon as the Employer had paid the defendant.

23. On 20th November 2013, the defendant wrote to the plaintiff, forwarding a cheque for Kshs. 500,000/-. By the letter of 20th November 2013, the defendant promised to remit further payments as and when the Employer paid the defendant.

24. In the light of those documents, I am satisfied that the plaintiff has demonstrated that the defendant is truly indebted to the plaintiff. Therefore, the defence on record cannot be sustained. It is struck out.

25. As there is now no defence on record, the claim is un-defended.

26. On the basis of the material before me, which shows that the plaintiff was paid Kshs. 500,000/- after the defendant was served with summons, I now enter judgment in favour of the plaintiff for Kshs. 6,800,783.40.

27. The principal sum of Kshs. 6,800,783.40 will attract interest at court rates from the date when suit was filed, until payment in full.

28. I also award to the plaintiff the costs of the application dated 17th April 2014, plus the costs of the suit.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 28th day of April 2015.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mwangi for the Plaintiff

No appearance for the Defendant.

Collins Odhiambo – Court clerk.