



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 273 OF 2005

AIR CONNECTION LTD.....PLAINTIFF

VERSUS

AIR KENYA AVIATION LTD.

T/A REGIONAL AIR.....DEFENDANT

R U L I N G

The Notice of Motion application dated 7th July 2005 seeks an order for summary judgement to be entered in favour of the Plaintiff against the Defendant in the sum of Kshs.2,931,601.80 and USD 540.75 together with interest on both amounts at court rates with effect from 1st May 2005 and the costs of the application. The application is based on grounds named therein i.e. that there is no real defence to the suit.

The application is supported by affidavit of Manjit S. Brar dated 7th July 2005 together with its annexures. The application is not opposed.

The brief history of the matter is that on 23rd May 2005 the Plaintiff, a company offering air freight clearing services to the Defendant company filed a suit against the Defendant claiming Kshs.2,931,701.80 and USD 560.75. The Defendant is alleged, as part of settlement of the said amount, to have issued the Plaintiff with a cheque no. 008405 for Kshs.655,407.25 which was however, dishonored upon presentation to the bank.

By their defence dated 16th June 2005, the Defendant denied owing the said sum to the Plaintiff. The defence does not at all address in any depth the said debt but states that the suit should be struck out on technicality. The Defendant never made any follow up or this allegation.

On 30th October 2009, the suit herein was dismissed for want of prosecution. However the court on 16th November 2010 reinstated the suit. By a Notice of Motion application dated 4th February 2010, the Defendant sought to reverse the court's order of 16th November 2010 which reinstated the suit. That application was dismissed on 25th October 2011 paving way for the application under consideration.

I have considered the application in its entirety. It is true that the defence filed is a mere defence which also, in my view is meant merely to prolong the determination of the matter. If that is so, as I do hold it is, then the defence is also an abuse of the process of this court.

I have noted that the annexures support a lesser sum of Kshs.655,407.25 as the amount of the cheque which was dishonored as per "MSB3". However MSB4 is a letter by the Plaintiff to the Defendant demanding Kshs.2,673,650.72 for imports account and USD 540.75 for export account.

The Applicant, though appears to have a strong case, has not explained the inconsistency in the amounts claimed. In the plaint and in this application the Applicant claims Kshs.2,931,601.80 and USD 540.75. However, the supporting documents show only one cheque of Kshs.655,407.25 and import account due of Kshs.2,673,650.72. There is inconsistency in the claim which only a trial can correct.

Further, the supporting documents and annexures are not attached to the supporting affidavit. I just found them somewhere in the file.

The carelessness with which the Plaintiff's counsel has prosecuted this application must cost the Plaintiff the order sought. A summary judgement applicant cannot afford to be ambiguous in his claim.

I dismiss the application with no orders as to costs.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 8TH DAY OF MAY 2012.

E. K. O. OGOLA

JUDGE

PRESENT:

Mburu H/B for Waithaka for the Plaintiff

Ismael & Ismael for the Defendant

Teresia – Court clerk