



REPUBLIC OF KENYA



**G. North & Son Ltd v Suguta Growers & Co (Civil Suit 564 of 2007)
[2009] KEHC 1841 (KLR) (Civ) (7 August 2009) (Ruling)**

G. NORTH & SON LTD v SUGUTA GROWERS & Co [2009] eKLR

Neutral citation: [2009] KEHC 1841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT 564 OF 2007

MK KOOME, J

AUGUST 7, 2009

BETWEEN

G. NORTH & SON LTD PLAINTIFF

AND

SUGUTA GROWERS & CO DEFENDANT

RULING

1. The plaintiff/applicant instituted this suit against the defendant seeking for judgment for a liquidated claim of Kshs.3,906,860/= being the sum owing by the defendant in respect of goods sold to the defendant by the plaintiff in the year 2006 as further particularized under paragraph four of the plaint. The application before me by way of a notice of motion dated 23rd April, 2008 the plaintiff is seeking an order of summary judgment against the defendant as prayed in the plaint.
2. This application is based on the grounds that the defence filed by the defendant does not raise any triable issues. The application is supported by an affidavit of Anthony Kariuki sworn on 23rd April, 2008 and a further affidavit sworn on 08th October, 2008. According to the plaintiff, by a local purchase order dated 28th August, 2006, the defendant ordered goods from the plaintiff which was duly supplied as per the delivery notes.
3. The plaintiff subsequently raised invoices requesting for the settlement of the invoices as per the terms and conditions of sale of goods which was thirty days after delivery of goods... By a letter dated 20th June, 2007, the defendant admitted its indebtedness to the plaintiff but it unilaterally sent postdated cheques to the plaintiff amounting to Kshs.3, 462,668.80. The plaintiff contends that there was no arrangement to settle the account by postdated cheques, and the plaintiff did not accept the arrangement.



4. On 25th February, 2008, the defendant through its advocates requested the plaintiff to bank the cheques. The cheques were banked and they were honored except for one cheque. The plaintiff would like to give credit for the sum of Kshs.2, 597,031.60. Which payment went through, however one cheque for Kshs.865, 677.20 which was also postdated was never banked. The plaintiff is therefore claiming the balance with costs and interest.
5. This application was opposed by the respondent; reliance was placed on the replying affidavit by Yabesh Nyandigisi sworn on 07th July, 2008 and a further affidavit filed on 20th November, 2008. According to the defendant, it is admitted that they owed a sum of Kshs.3, 462,668/= which they have settled by way of postdated cheques and it is only one cheques which has not been paid. The defendant dispute a sum of Kshs.444, 192/= which has been a subject of meetings for purposes of reconciling the accounts.
6. Counsel for the defendant submitted that this application was premature, and he urged the court to order the matter to proceed for trial in respect of the disputed sum. He made reference to the case of Giciem Construction Company v Amalgamated Trade & Services 1983 KLR page 158 in which the Court of Appeal held that;

“In considering applications of Order XXXV the courts should grant leave to defend if there genuinely exists triable issues even if the court is skeptical about the success or merits of the proposed defence, and where the court has doubts as to the bona fides of the application it ought to impose an appropriate condition when granting leave to defend”.
7. Having set out the summary of the background of this matter and the rival submissions, this application is brought under provisions of Order XXXV of the Civil Procedure Rules. As I understand it, a plaintiff with a liquidated claim to which there is clearly no defence can obtain a quick summary judgment without being unnecessarily kept from what is due to it by way of delaying tactics by the defendant. However, if there are reasonable grounds raised by the defence, raising triable issues, the plaintiff is not entitled to summary judgment.
8. The primary issue for determination in this application is whether the defence raises triable issues. The defendant does not deny that they received the goods supplied by the plaintiff. Indeed they acknowledge a sum of Kshs.3, 462,708.80 out of which they have already paid the entire sum except for Kshs.865, 677.20 which the defendant admits. The point of departure is a sum of Kshs.444, 192/=.
9. Going by the documents annexed to the supporting affidavits, the plaintiff annexed copies of the local purchase order in which the defendants ordered for goods. The goods were supplied as per the delivery notes, invoices were sent and when payment was not forthcoming, demand was made when the defendants issued the postdated cheques. Although the defendants are denying and disputing a sum of Kshs.444, 192/= this is a mere denial which is not supported by any evidence.
10. The defendant purported to settle the account by postdated cheques which were not part of the terms and conditions of the sale. The defendant has not shown how they did not receive the goods represented in the local purchase order, delivery notes and the invoices. This denial which is not supported by any documents does not merit going for trial. The plaintiff is entitled to summary judgment for the balance of the sum remaining unpaid with interest at court rate and costs.

RULING READ AND SINGED AT NAIROBI THIS 7TH DAY OF AUGUST, 2009.

M. K. KOOME

JUDGE

