



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 270 of 2005

MICROLAN (K) LIMITED
.....PLAINTIFF

V E R S U S

NETWORK TECHNICS & SYSTEMS LIMITED
.....DEFENDANT

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

The Plaintiff filed suit by plaint dated 5th April, 2005 claiming against the Defendant the sum of KShs. 1,414,588/00, the same being the balance due for goods sold and delivered. The goods sold and delivered were stated to be Dell computers and accessories. The Plaintiff also claimed interest on that sum at commercial rates and costs of the suit and interest thereon at court rates.

The Defendant filed defence dated 18th August, 2005. It pleaded that it had paid fully for a Dell computer and its accessories ordered from the Plaintiff in the sum of KShs. 247,915/20; it therefore denied being indebted to the Plaintiff as claimed or at all.

On 10th February, 2006 the Plaintiff filed an amended plaint with the leave of the court. The effect of the amendment was to change the particulars of the goods sold and delivered from Dell computers and accessories to Cisco catalysts and routers, and also to reduce the amount claimed from KShs. 1,414,588/00 to KShs. 958,575/84. The Defendant did not file any amended defence.

The Plaintiff has now come to court by notice of motion dated 16th May, 2006. It seeks two main orders:-

(1) That the Defendant's defence be struck out under Order 6, rule 13(1) (b), (c), and (d) of the Civil Procedure Rules (the Rules) for being scandalous, frivolous, vexatious and an abuse of the process of the court.

(2) That summary judgment be entered for the Plaintiff against the Defendant under Order 35, rule 1 of the Rules for the sum of KShs. 958,575/84 as per the amended plaint.

The grounds of the application appearing on face thereof are:-

1. That the Plaintiff's case is too plain for argument or defence.
2. That there is no clear and arguable point to be canvassed on behalf of the Defendant as to entitle it to unconditional leave to defend.
3. That the Defendant has failed to put in an amended defence within the stipulated period despite having been duly served with an amended plaint on the 16th February, 2006.
4. That the defence in place is general, frivolous, vexatious, contradictory, a sham, raises no triable issues and an abuse of the court process of the court.
5. That the Plaintiff's claim is supported by documentary evidence.
6. That the Defendant acknowledged in writing its indebtedness the Plaintiff.

The application is supported by affidavit of one DAVID KITUR, the chief executive officer of the Plaintiff. To it are annexed two delivery notes dated 8th August and 24th September, 2003 respectively, two invoices dated 9th August and 3rd September, 2003 respectively, a statement of account dated 31st December, 2003 and various correspondences between the parties.

The application was duly served upon the Defendant; it did not file any papers in response thereto. The application is therefore unopposed.

I have considered the submissions for the learned counsel for the Plaintiff. I have also perused the material placed before the court. The Plaintiff's claim is a liquidated demand with interest. Its chief executive officer has sworn positively to the facts verifying the cause of action. Sufficient notice for the application was given to the Defendant which has not shown either by affidavit or by oral evidence or otherwise that it should have leave to defend the suit. The defence as filed is a general denial to the claim as amended that raises no triable issue.

In the result I must allow the application. The Defendant's defence dated 18th August, 2005 is hereby struck out and summary judgment entered for the Plaintiff as prayed in the amended plaint dated 24th November, 2005. The Plaintiff shall also have the costs of this application. There will be orders accordingly.

DATED AT NAIROBI THIS 28TH DAY OF AUGUST, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 31ST DAY OF AUGUST, 2007