



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

**Civil Case 79 of 2005**

**STANDARD CHARTERED BANK KENYA LTD.....**  
**PLAINTIFF**

**VERSUS**

**BIG BEE LIMITED.....**  
**DEFENDANT**

**R U L I N G**

After entering appearance the Defendant requested for particulars from the Plaintiff of the plaint dated 9<sup>th</sup> February, 2005 as follows:-

**“1. OF PARAGRAPH 18**

***Particulars of the request made by the Defendant to liquidate the outstanding amount in 48 equal monthly instalments commencing on the 5<sup>th</sup> September, 2001 and the said immediate payments.***

**2. OF PARAGRAPH 19**

***Particulars of the letter dated 7<sup>th</sup> August, 2001 and particulars of subsequent agreements.***

**3. OF PARAGRAPH 20**

***Particulars of proposals made by the Defendant and or particulars of the variation made therein in regard to the terms of the contract.***

**4. OF PARAGRAPH 21**

***Particulars of the minutes of the meetings held between the Plaintiff and the Defendant, and of the letter dated 18<sup>th</sup> July, 2002.***

**5. OF PARAGRAPH 22**

***Particulars of the insurance cover dated 20<sup>th</sup> August and copy of the said paid premiums.”***

The Plaintiff provided particulars as follows:-

**“1. OF PARAGRAPH 18**

*By letters dated 7<sup>th</sup> August, 2001, 21<sup>st</sup> August, 2001 and 24<sup>th</sup> August, 2001 – copies attached.*

**2. OF PARAGRAPH 19**

*As in answer to paragraph 18 above.*

**3. OF PARAGRAPH 20**

*By letters dated 8<sup>th</sup> October, 2001, 24<sup>th</sup> August, 2001, 2<sup>nd</sup> November, 2001 and 4<sup>th</sup> March, 2002 – copies attached.*

**4. OF PARAGRAPH 21**

*No minutes kept but letters written to confirm the meetings. See letters dated 18<sup>th</sup> July, 2002, 22<sup>nd</sup> July, 2002, 16<sup>th</sup> November, 2004 and 17<sup>th</sup> November, 2004 – copies attached.*

**5. OF PARAGRAPH 22**

*Paragraph 22 is pleaded with sufficient particularity. More details to be given at discovery stage.”*

The Defendant then filed its defence dated 6<sup>th</sup> July, 2005.

In its turn the Plaintiff requested for particulars of the said defence as follows:-

**“1. Of Paragraph 4**

*Of the allegation that the agreement to purchase the property L.R. No. 209/10802 was superceded by other variations and new and further agreements reached between the parties hereto from time to time;*

- (a) Between who were the variations and new and further agreements made?*
- (b) When were the variations and new and further agreements made?*
- (c) Were the variations and new and further agreements oral or in writing?*
- (d) If in writing identify the documents.*
- (e) If oral, specify the dates and with whom the variations and new and further agreements were made.*

**2. Of paragraph 6**

*Of the allegation that the mode of payment and installments were varied and new and further agreements reached with regard to the balance of the purchase price.*

- (a) Between who were the variations and new and further agreements made?*
- (b) Specify the dates when the variations and new and further agreements were made.*
- (c) Were the variations and new and further agreements oral or in writing?*
- (d) If in writing, identify the documents.*

(e) *If oral, specify the dates and with whom the variations and new and further agreements were made.”*

The Defendant provided particulars as follows:-

**“1. OF PARAGRAPH 4**

*The agreement is pleaded and implicit in paragraphs 18, 19, 20 and 21 of the plaint.*

**2. OF PARAGRAPH 6**

*The agreement is pleaded and implicit in paragraph 18, 19, 20 and 21 of the plaint.”*

The Plaintiff does not think that these particulars are sufficient, and has therefore come to court by chamber summons dated 28<sup>th</sup> October, 2005 under rules 8 (2) and 16 of Order 6 of the Civil Procedure Rules seeking the main orders that the Defendant do, within fourteen (14) days from the date of service of order made herein, serve the Plaintiff with particulars as requested, and in default the Defendant’s defence to be struck out with costs to the Plaintiff.

I have considered the submissions of the learned counsels appearing, and I have read the cases cited. Except for matters which must be specifically pleaded as required by rules 4, 6A, 6B and 8 of Order 6, rule 3 (1) of the same Order requires that every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for its claim or defence, but not the evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits. In other words a party needs to plead its case only so that its adversary will know what case to meet. A party will seek further and better particulars in order to prevent surprise to himself at the trial. But he will not be permitted to fish for evidence that his adversary might tender at the trial. Each case will depend on its own particular facts.

It seems to me to be clear that by the particulars the Defendant provided, it is simply saying that it shall rely on the various agreements and further agreements between the parties pleaded in paragraphs 18, 19, 20 and 21 of the plaint. It does not seem to me that the Defendant has pleaded in paragraphs 4 and 6 of the defence any agreements and further agreements separate from those pleaded in paragraphs 18, 19, 20 and 21 of the plaint. The Plaintiff therefore has sufficient particulars to enable it to meet the Defendant’s defence at the trial. I so hold.

In the circumstances I must refuse the application by chamber summons dated 28<sup>th</sup> October, 2005. It is hereby dismissed with costs to the Defendant. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MARCH, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 10<sup>TH</sup> DAY OF MARCH, 2006.**