



REPUBLIC OF KENYA

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

Civil Suit 234 of 2005

MURANG'A COUNTY COUNCIL.....
.....PLAINTIFF

VERSUS

THE KENYA POWER & LIGHTING CO. LIMITED.....
DEFENDANT

R U L I N G

The plaintiff's claim is that in accordance with section 148 of the local Government Act and with approval of the minister for local Government it duly imposed fees or charges for electric poles erected by the defendant in Muranga District. The plaintiff therefore claims from the defendant kshs 17, 589, 600/- in respect of those charges.

The defendant denies that claim and further denied that it is the owner of all electric poles in that district.

The plaintiff by its chamber summons brought under order VI Rule 8 of the Civil Procedure Rules seeks for an order that the defendant do supply particulars of its defence in terms of the following request:

“(a) (i) Besides the defendant state who else has electric poles within Muranga District.

(ii) How many electricity poles within Muranga District do not belong to the defendant?

(b) State the number of electricity poles that the defendant owns or has erected in Muranga District.”

Plaintiffs argument is that it is important that the defendant gives the particulars of the number of poles it admits are owned by the defendant within that district. Failure to disclose will unnecessarily prolong the time of hearing and unnecessarily increase costs. That it is in the interest of justice that the defendant do disclose the number of its poles. Plaintiff relied on the case ABDULLA – V – ESMAIL [1969] E.A. 111.

The application was opposed. Defence said the particulars sought related to a denial in the defence and not an admission. That the defendant denied owning the 115 pole being the subject of charge by the plaintiff. defence relied on the case JOSHI – V – UGANDA SUGAR FACTORY LTD [1968] E.A. 570. The holding of that case was as follows: -

“The refusal to admit did not amount to a positive averment; there was not likely to be any question of surprise; and the denial was not evasive; therefore particulars should not be ordered.”

As a general rule all necessary particulars must be embodied in the pleadings. The object of particulars is to prevent surprise at the trial by telling the opposite party what case it is to meet. Our legal system however, is adversarial which is characterised by opposing parties who contend against each other for a result favourable to themselves. In such a system it is important to distinguish between particulars and evidence. The courts ought to guard a plaintiff or defendant from prying into the other's brief for finding out what evidence will be adduced at the trial.

It is the plaintiff who has brought this against the defendant and has calculated the amount owed to it thereof. At the hearing it will have the burden of proving that amount by showing the number of poles it is charging. To order the defendant to produce the particulars sought, particularly the particulars of the poles the defendant owns would be going into the realm of evidence. Particulars will be ordered of the material facts on which a party pleading relies but not of the evidence by which those facts are to be proved I find that in regard to the defendant's ownership of electric poles, there will not be an element of surprise and therefore those particulars will not be ordered.

As regards the first particulars, (a) (i) and (ii) the particulars cannot be ordered because to ask the defendant to disclose any other parties who own electric poles in Muranga would be an arduous task.

In summary the plaintiff's chamber summons dated 19th June 2006 is dismissed with costs to the defendant.

MARY KASANGO

JUDGE

Dated and delivered this 17th July 2006.

MARY KASANGO

JUDGE