



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

Civil Case 27 of 2006

JOHN MBURUPLAINTIFF

VERSUS

CONSOLIDATED BANK OF KENYA LIMITEDDEFENDANT

RULING

The Defendant has moved this court by Order VI Rule 8 of the Civil Procedure Rules and Order X Rule 11 and 11A seeking that the Plaintiff will give particulars of the reply to defence. In support of the application, the advocate for the Defendant went through the various requests that have been made to the Plaintiff and stated that what the defendant required are details of that reply to defence. In regard to paragraph 7A of the reply to defence, defence stated that what was required was the details of the alleged request for statements. He further stated that the Plaintiff cannot plead in the reply to defence that he severally requested for those statements without stating when that request was made. He said that the defendant finds itself in difficulty on how to plead without those particulars. In respect of paragraph 7B he stated that the Plaintiff had alluded to certain warranties being made by the Defendant. The defendant in order to respond to that allegation needed to have details of the alleged warranties. In respect of paragraph 8G, the defendant's counsel state that there was need for particulars to be given in respect of the alleged breach of statutory duties. He similarly said that the pleading in paragraph 8(g) (vii), there was an allegation of legal liability which the Plaintiff needed to give details. He said that the opposition raised by the Plaintiff to the present application was on the basis that the defendant was fishing for evidence and trying to draw the plaintiff to show its entire case. In response counsel said the following:-

1. That the defendant had called for material facts necessary to enable the defence to deal with the plaintiff's claim.
2. That litigation is not war and the parties are supposed to put forward their litigation clearly. That litigation is not an ambush.

He further submitted that when parties come before court it is necessary for them to be clear what each is putting forward before court. The application was opposed by the plaintiff who relied on grounds of opposition and on the replying affidavit. The essential opposition was as follows:-

1. That the request for particulars does not consist of particulars as envisaged by Order VI.
2. That the details which are sought by the defendant are directed to the plaintiff's evidence or that they are issues of law to be canvassed at the hearing.
3. That the Plaintiff's pleadings contain sufficient particulars for this action.

In support of the opposition the plaintiff relied on authority of **Bullen and Leake and Jacob's Precedents of Pleadings** and quoted the following passage:-

“Particulars are of course required only of facts and not of evidence, and they must be distinguished from the mode by which the case of a party is to be proved”.

Plaintiff's counsel said that this authority supported the plaintiff's contention that what the defendants sought from the plaintiff was evidence and that accordingly the plaintiff is not entitled to give these particulars. The plaintiff further relied on the **Election Petition No. 5 of 2003 Robert Nelson Ngethe v Mbogori Njeru & another**. The Plaintiff relied on this case in support of his contention that the defendant's request was too broad that the Plaintiff could not respond to it. He stated that, that was holding of the aforesaid case.

Order VI Rule 8 of the Civil Procedure Rules requires that every pleading shall contain the necessary particulars of any claim in defence or any other matter pleaded. That being the case it is necessary that a party will give with precise degree particulars of its claim to enable to the other party to know the case that they will meet at trial. But as much as particulars ought to be sought it is necessary for the court to consider the circumstances and the nature of the acts alleged in order to consider whether particulars ought to be ordered. The function of the particulars therefore, is to inform the other side the nature of the case they have to meet as distinguished from the mode which the case is to be proved.

I have considered the particulars sought by the defendant and I am of the view having considered the pleadings hereof that the particulars sought in regard to paragraphs 7A, 7B, 8C are relevant to enable the defendant know the case that it is to meet. I do not accept that the particulars sought of paragraph 8(g) (i) and paragraph 8(g)(vii) ought to be supplied by the Plaintiff. Those paragraphs relate to statutory provisions or legislative documents which I will not order the Plaintiff to supply. Particulars cannot be supplied in regard to the law. The order of the court therefore is that:

- 1. The Plaintiff will within 30 days from today supply to the Defendant particulars of the Plaintiff's reply to defence contained in the request dated 10th May, 2006 in regard to paragraphs 7(A), 7(B) and 8(C).**
- 2. The Plaintiff shall not supply the particulars requested in the aforesaid request in regard to paragraphs 8(g)(i) and 8(g) (vii).**
- 3. The costs of the Chamber Summons dated 12th July, 2006 shall be in the cause.**

MARY KASANGO

JUDGE

Dated and delivered this 18th October, 2006.

MARY KASANGO

JUDGE