



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
Civil Suit 117 of 2006

Mamicha & Co Advocates.....APPLICANT

Versus

City Council of Nairobi.....RESPONDENT

RULING

The plaintiff presented an opposed chamber summons dated 12th July 2006.

The Orders sought therein are that:-

- (i) The defendant be compelled by order of this Honourable court to supply the plaintiff with the particulars sought in its request for particulars dated 9th June 2006 within such period that this court may prescribe;
- (ii) That in the event of the defendant's default to supply the particulars after such order the defendant's defence be struck out with costs.

In its grounds the plaintiff state that unless the particulars are supplied the plaintiff shall be taken by surprise at the trial and thereby suffer prejudice.

The plaintiffs suit against the defendant seeks the recovery of advocate's clients costs incurred in various suits where the plaintiff represented the defendant. The plaintiff's total claim is for kshs 6,670,648.05. The plaintiff gave details of the various cases where the plaintiff represented the defendant.

In response to the plaintiff's claim the defendant filed a short defence consisting of 4 paragraphs. Only paragraph three responded to the claim in the following terms.

"In reply to paragraphs 5,6,7 of the plaintiff, the defendant avers that in an earlier payment by the defendant to the plaintiff, it was discovered that the plaintiff was overpaid by kshs 7 million particulars whereof are within the plaintiff's knowledge."

The paragraph provoked the request for particulars and the present application.

The request for particulars is the following terms:-

“of paragraph 3

- a) When was the over payment made?
- b) What is the exact amount of money that was overpaid?
- c) For which case(s) was the overpayment made?

All those requests except (b) are necessary to enable the plaintiff know the case it is to face and to remove the element of surprise. The manner in which paragraph 3 of the defence is, shows that the onus of proving the alleged over payments is squarely upon the defendant and it is then just the defendant to answer the request. If the defendant gives the particulars sought this will have the effect of narrowing the issues to be considered at trial.

The court will therefore grant the following orders:-

- (1) The defendant shall within 30 days from the date of service of this order serve upon the plaintiff particulars to the following request:-

Of paragraph 3 of defence:

- a) When was the over payment made?
- b) For which case(s) was the over payment made?

- (2) In default of supply of particulars as in (1) above the defendant’s defence dated 6th June 2006 shall be struck out, without further orders of this court.

- (3) The costs of the chamber summons dated 12th July 2006 shall be the plaintiffs in any event.

October 13, 2006

Kasango, J