



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

**Civil Case 1073 of 2001**

**LILA VADGAMA .....PLAINTIFF**

**VERSUS**

**CITY PANEL BEATERS & PAINTERS LTD.....DEFENDANT**

**RULING**

In his amended Chamber Summons of the 4.11.2005 the Applicant seeks the following orders:-

**THAT two Re-amended defence/s dated the 20<sup>th</sup> March, 2003 be struck out, and judgement be entered for the plaintiff for as prayed for in the plaint, namely Shs.1,401,000.00 interest at court rates and costs.**

Mr. Vadgama who is the Applicant grounded his application on the fact that re-amended Defence allowed to be filed by Mr. Justice Mwera in his ruling of the 11.3.2003 did not comply with either the ruling or the Rules in that the first re-amended Defence served on Mr. Vadgama did not comply with Order 6A rule 6 which states as follows:-

“Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.”

Further that under Order 6A rule 7(2) which states:-

“All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.”

The Re-amended Defence did not comply with this rule in that it was a photocopy. Subsequently a re-amended Defence was served which was in an original form but this did not bear a court stamp showing it had been filed.

Further that the re-amended Defence offended the provisions of section 49 of the Advocates Act which states:-

“no judgement shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;”

It was Mr. Vadgama's submission that the defence of reasonableness or quantum were in the alternative.

Mr. Mogeni for the Respondent referred to the ruling of Mr. Justice Mwera and submitted that the Defendant had been allowed to retain paragraph 8(b) of the Defence which was the paragraph which Mr. Vadgama had submitted was in contravention of section 49(a) of the Advocates Act.

It would appear that this sub paragraph of the Defence was not ordered to be struck out.

This is not the proper forum to make a finding on the submission of Mr. Vadgama on this fact, as this is a matter for the Judge hearing the case in due course. The question will be whether the word "or" between the words reasonableness and quantum is disjunctive or conjunctive.

There has been considerable delay in this matter coming for hearing relating to matters, which took place in 2003. However, that delay cannot be imputed to the Respondent.

I agree with Mr. Vadgama that under the provision of Order 6A rule 7 that the re-amended Defence was defective as served for the reasons stated by him. However, Order 6A rule 6 gives the court discretion to extend the period within which an amended pleading may be amended. I, therefore, in exercise of my discretion, extend the time for making the amendments for 14 days from today. In that time the re-amended Defence is to be filed in compliance with the order of Mwera J. and Order 6 rule 7(2) and served on the Applicant.

The application has been occasioned by the default of the Respondent and I award the costs to the Applicant in any event.

**Dated and delivered at Nairobi this 2<sup>nd</sup> day of March, 2005.**

**P. J. RANSLEY**

**JUDGE**