



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION – MILIMANI
Civil Case 235 of 2004

GEMINIA INSURANCE COMPANY LTD..... PLAINTIFF

VERSUS

BEATRICE WANJIRU.....1ST DEFENDANT

CAROLYN MUKAMI2ND DEFENDANT

JOHN MWAURA3RD DEFENDANT

RULING

By an Application in the form of a Summons in Chamber filed in Court on 19th November, 2004, the Plaintiff seeks the striking out of the 1st Defendant's defence and Counterclaim and the amended defence and counterclaim. The reasons for the application are that the defence and counterclaim discloses no reasonable defence or counterclaim against the Plaintiff and that the amended defence and counterclaim is an abuse of the process of the Court having been filed out of time without leave.

The Application is expressed to be brought under Order VI Rule 13(1) (a) and 16 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of the Law. The genesis of the Application is a plaint filed on 6th May 2004 in which the Plaintiff claims a declaratory order that it is not entitled to satisfy any judgment on a claim arising out of the use of a Certificate of Insurance No. C2495245 after 5.11.2003 on the ground that the said Certificate of Insurance had been cancelled.

The 1st Defendant filed a statement of defence and counterclaim on 30.7.2004. She then filed an amended statement of defence and counterclaim on 6.10.2004. The Plaintiff did not file a Reply. The statement of defence apart from containing a bare denial of paragraphs 9 and 10 of the Plaint does not deny the Plaintiff's claim crystallized in paragraph 11 of the Plaint. Instead the 1st Defendant in paragraphs 5 and 6 of the defence makes allegations against a party she terms a 3rd Defendant. The counterclaim at paragraph 10 blames the 2nd Defendant and the alleged 3rd Defendant. The 1st Defendant does not blame the Plaintiff at all.

In the amended statement of defence and counterclaim filed by the 1st Defendant on 6.10.2004 the only amendment introduced is cancellation of the 3rd Defendant but reference is still made to him by name in paragraphs 5,6 and 10 thereof. There are no fresh allegations made against the Plaintiff.

Counsel for the 1st Defendant filed Grounds of Opposition in which it is alleged that the application is unmeritorious and an abuse of the Court process and that no other parties had been introduced to the suit and further that the 1st Defendant had a right to counterclaim against the co-defendant.

At the hearing of the application, neither the 1st Defendant nor her Counsel attended. The application

therefore proceeded ex-parte.

From the pleadings and submissions made by Counsel for the Plaintiff it is clear that the 1st Defendant has no answer to the Plaintiff's claim. Instead she has set up a claim against the 2nd Defendant and one John Mwaura. Indeed her claim against the 2nd Defendant and the said John Mwaura is a consequence of the Plaintiff's claim against her. In the premises I find that the statement of defence filed on 30.7.2004 and as purportedly amended on 5.10.2004 and filed on 6.10.2004 discloses no reasonable defence. The Counter claim dated 30.7.2004 and purportedly amended on 5.10.2004 is clearly raised against the 2nd Defendant and the said John Mwaura and not against the Plaintiff.

The Plaintiff also based his application to strike out the amended statement of defence and counterclaim on the ground that the same was filed without leave. I agree with the Plaintiff's contention that pleadings herein closed 14 days after service of the defence and counterclaim. The 1st Defendant therefore required leave to file her amended defence and counterclaim as provided under Order VIA Rules 3(1) and 5 (1) of the Civil Procedure Rules. It would appear also that even if pleadings had not closed the Plaintiff would still require the leave of the Court to introduce and strike out the name of John Mwaura referred to above.

In the result the orders of the Court are that the 1st Defendant's defence, and counterclaim is struck out as against the Plaintiff; the amended defence and counterclaim is also struck out. The 1st Defendant shall bear the Plaintiff's costs of this Application and the suit.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY 2005.

F. AZANGALALA

JUDGE

Read in the presence of:-