



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Case 276 of 2004

ADRIAN PIERRE LOUISPLAINTIFF

VERSUS

ANNE CLARA WANJIRUDEFENDANT

RULING

The plaintiff brought this action against the defendant, seeking a prayer from the court that the suit property purchased in the defendant's name was held by the defendant in trust for the plaintiff.

In defence, the defendant alleged that there was an intimate relationship between her and the plaintiff and that during the subsistence of that relationship, the defendant assisted the plaintiff to establish and run a business. The defendant denied that there was a trust that existed and pleaded that some of the purchase money was given to her by the plaintiff, as a gift, whilst the balance was procured from a financial institution.

The plaintiff in response to that defence stated that the property was of necessity registered in the defendant's name because the plaintiff was under legal disability.

The plaintiff also stated that an affidavit sworn by the defendant was so sworn "***willingly and with full knowledge***".

The defendant sought particulars of that reply to defence, first in regards to the alleged legal disability and secondly on the statements, "***the defendant signed the affidavit willingly***", "***with full knowledge and understanding of the contents and purport thereof.***"

The plaintiff responded to the aforesaid request for particulars as follows: -

".....The plaintiff was unable to get the property allocated to him for reasons which the seller of the property failed to disclose."

".....The defendant being literate signed the affidavit without coercion."

The defendant was dissatisfied with that response and accordingly applied by chamber summons dated 20th May 2005 that the plaintiff do provide further and better particulars in response to the request for particulars. The defendant's application was brought under Order VI Rules 8 and 16 of the Civil Procedure Rules.

Learned counsel for the defendant, Mr Patrick Mwiti, argued that it was necessary to get the further and better particulars of the plaintiff's own assertion. That the defendant, in the absence of those particulars was unable to know the disability that the plaintiff found himself in and it was, therefore, necessary for the plaintiff to clarify the kind of legal disability.

That in the absence of the particulars sought the defendant did not know or understand what case she was facing.

Counsel stated that it is a legal requirement that a party ought not to be subjected to a surprise or ambush at the hearing.

The plaintiff's learned counsel Mr Imende, started by stating that the particulars sought by the defendant had been supplied. That it was incumbent upon the defendant to indicate, after receiving the plaintiff's response, the further and better particulars required, in the light of that response.

Plaintiff's counsel argued that all the material particulars had been supplied to the defendant, and that the particulars so supplied were the best the plaintiff could supply. That to order the plaintiff to supply any other or further particulars would be to require the plaintiff to give evidence, which would be oppressive.

Order VI Rule 8 (1) of the Civil Procedure Rules, requires that every pleading do contain the necessary particulars of any claim. The principle behind the necessity of providing further and better particulars is that the litigation between parties, and particularly the trial, should be conducted fairly, openly and without surprises and most importantly to minimise costs. Undoubtedly supply of particulars limit the generality of the pleadings or of the claim or the evidence, it also limits and defines the issues to be tried, and to which discovery is required. The supply of particulars has the effect of binding the other party down to a definite story.

In the present case the plaintiff, on receipt of request for particulars made his response. The defendant in making the present application fails to particularly state, what is deficient with the response. In respect to the particulars of paragraph 4 of the reply to defence, the averment on disability, I have looked at the pleadings, the request for particulars and the response. I find that the plaintiff in his response has pinned himself to a definite line, that he does not know why there is legal disability and that knowledge is with a third party not a party in this case. The plaintiff obviously at hearing/trial will be confined to state just that.

The particulars supplied by the plaintiff, in respect of paragraph 6 of the Reply to Defence, I find sufficiently answered the request. To seek the plaintiff further answer to that request, would, I believe require the plaintiff to supply evidence. The court will not sanction an attempt to serve interrogatories under the guise of seeking particulars.

The upshot of this ruling is that the court finds that there is no merit in the defendant's application dated 20th May 2005 and the same is dismissed, with costs to the plaintiff.

Dated and delivered this 7th December 2005.

MARY KASANGO

JUDGE