



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL SUIT 515 OF 2005

ALICE KARUGU WANYOIKEPLAINTIFF

VERSUS

BRITISH AMERICAN INSURANCE CO. (K) LTD.....DEFENDANT

RULING

The plaintiff's chamber summons dated 21st October 2005 is brought under Order VI Rule 13 (1) (b) (c) (d) and Rule 16 of the Civil Procedure Rules. That chamber summons seeks an order that, the defendant's defence filed herein be struck out and judgment be entered forthwith in favour of the plaintiff as prayed in the plaint.

The application is based on the grounds that the defendant is truly indebted to the plaintiff in the sum claimed in the plaint; that the defence, herein, consists wholly of mere denials and is only aimed at delaying payment to the plaintiff; that the defence is therefore frivolous vexatious in view of the documents the plaintiff relies on. The plaintiff is a widow and the legal administrator of the Estate of Francis Wanyoike Ngumba.

The plaintiff's claim against the defendant arises from three insurance policies that were purchased by the deceased as follows; life policy, accident indemnity policy, personal accident policy.

The plaint pleads that the initial contact was made by a defendant's agent, namely CHARLES MUCHERU MUYA. After the deceased agreed to purchase the said policies from the said defendant's agent, the insurance covers for those policies were issued. The plaint further pleads that the beneficiaries of those policies were the plaintiff and her daughter.

The plaint states further that the deceased paid monthly premium to the defendant's agent, until July 2002 when that agent ceased working for the defendant. The defendant instructed the deceased to remit the premium, at one of the defendant's branch. The deceased, it is pleaded, paid the premium up to the month of May 2004 when he died from gunshot wound. The plaint indicates that the plaintiff has made claim under those policies to the defendant and the defendant has failed to make payment on the basis that the deceased had only paid up to 31st December 2003, and accordingly the benefit had lapsed. The plaint pleads estoppel against the defendant, who continued to receive premiums from the deceased up to the month of May when he died. The defence filed on behalf of the defendant denies the various paragraphs of the plaint but fails to deny paragraph 3 of the plaint which pleads the agency of Charles Mucheru Muya, and further pleads that it was that agent who approached the deceased to interest him in the insurance policies, the subject of this suit. The defence after merely denying the plaint as aforesaid pleaded in the alternative as follows: -

“Further, in the alternative and without prejudice to the foregoing the defendant avers that though the deceased is alleged to have had policies with the defendant the same were not paid for from January 2004 thus the said policy lapsed. The defendant shall crave leave of the court to rely on the policy document referred to by the plaintiff.”

The plaintiff’s learned counsel Mr Muturi, argued that the defence, hereof, is a sham since it had failed to respond to a very comprehensive plaint and only contains mere denials. Some of the mere denials that the plaintiff’s counsel highlighted were; that it denied the plaintiff took out the policies, it denied the death of the policy holder, it denies its liability on the policies and it denied that its liability on the policies and it denied that the defendant received payments of premiums up to May 2004. Plaintiff’s counsel then referred to the inconsistency in the alternative pleading where the policies were admitted, but then the defence stated that they had lapsed. The defence learned counsel Miss Kamoyo, opposed the application on behalf of the defendant. She argued that the defence was unfit to be struck out, for reasons such as the fact that a third party is mentioned in the plaint and yet that third party has not been made a party in these proceedings. That the defence should not be struck out because the plaintiff had failed to annex receipts supporting the payments made. Defence also faulted the plaintiff’s supporting affidavit for deponing to payment yet the plaintiff failed to state her source of information regarding those payments. Defence finally stated that if the suit proceeded to trial the plaintiff would not be prejudiced.

The defendant faced with the plaintiff’s plaint merely denied it, which clearly set out the plaintiff’s claim, and which plaint referred to how the insurance relationship between the plaintiff and the defendant started, stating how and when the premium payments were made by the deceased up and until the month he died, May 2004, laying claim to the doctrine of estoppel against the defendant, who continued to receive premiums from the deceased until the month of his death, and accordingly prayed that the defendant be estopped from denying its liability on the said policies. Faced with that elaborate plaint, the defendant responded to it with a defence, which denied, all those details. In other words the defendant denied the deceased purchased the three policies, paid the premiums, firstly to its agent and subsequently to the defendant directly, denied that the deceased was shot and died on 29th May 2004, denied receipt of the plaintiff’s demand letter to it; and denied its failure to respond to the plaintiff’s demand.

In the alternative the defence pleaded that the policies lapsed for failure to pay the premium for January 2004. The defendant in its replying affidavit denies receipt of any payment of the premiums by the deceased; then states further in paragraph 6 as follows: - “That in reply to paragraph 6 and 7 of the affidavit, no proof of payment has been annexed to the plaintiff/applicant’s affidavit to cover for the period of between November, 2001 and June 2003.” A casual glance of the defence pleadings as highlighted, herein above, obviously reveal that the defendant has charged its claim on the months allegedly not paid premium at least three times. January 2004, the whole period of insurance and finally between November 2001 and June 2003.

I find the defendant’s defence is evasive and double tongue and lacking in candidness. The defence merely denies contents of the paragraphs in the plaint and that is not sufficient. In the case of **MAGONGA GENERAL STORES – VERSUS – PEPCO DISTRIBUTORS LTD [1987] 2 KAR 89**, the court of appeal held: -

“A mere denial is not a sufficient defence and a defendant has to show either by affidavit, oral evidence, or otherwise, that there is a good defence.” The defence is a mere denial because from paragraph 2 to 5, it states: - “The defendant denies the contents of paragraph (2) and puts the plaintiff to strict proof hereof.”

The defence in so pleading fails to state why it denies that paragraph. It is immaterial and adds no weight or value to plead “puts the plaintiff to strict proof hereof.”

The case in point is **THORP – VERSUS – HOLDWORTH [1876] 3 CH. 637** which was approved by the court of appeal in **CHATTE – VERSUS – NATIONAL BANK OF KENYA KSU C.A. 50 1996**, which held: -

“When a party in any pleadings denies an allegation of fact in the previous pleadings of the opposite

party, he must not do so evasively, but answer the point of substance..... when a matter of fact is alleged with diverse circumstances, it shall not be sufficient to deny it as alleged along those circumstances, but a fair and substantial answer must be given.” Halsbury’s Law of England states the law as follows: -

“General denial insufficient: it is not sufficient for a defendant in his defence to deny generally the grounds alleged by the statement of claim or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim: each part must deal specifically with each allegation of fact of which he does not admit the truth.....when a party in any pleadings denies an allegation of fact in the previous pleadings of the opposite party he must not do so evasively, but must answer the point of substance.” I find that a defence, which is as evasive as the defence herein, and which fails to sufficiently respond to the plaintiff’s claim is frivolous and vexatious and is liable to struck off. The defendant’s defence fails to show the issues that a court would be called upon to determine, if this case went to trial.

Having made that finding of the defence, I on the other hand find that the plaintiff has proved that it is entitled to judgment as prayed in the plaint. The defendant having failed to deny the agency of Muya, it follows that the payment allegedly made to him, was made as agent of the defendant. The plaintiff in regard to the other period, from July 2002 to May 2004 has displayed the defendant’s receipts of premiums. Having found that the defence should be struck out I also find that the plaintiff ought to be granted judgment as prayed.

The orders of the court are: -

- (1) That the defendant’s defence filed herein on 7th October 2005 is hereby struck out.
- (2) That judgment be and is hereby entered for the plaintiff as prayed in the plaint.
- (3) That the plaintiff is awarded the costs of the chamber summons dated 21st October 2005.

Dated and delivered this 7th December 2005.

MARY KASANGO

JUDGE