



REPUBLIC OF KENYA
IN THE HIGHCOURT FO KENYA AT NAIROBI
MILIMANI COMMERCIAL COURT
CIVIL CASE NO. 946 OF 2002

COOPER KENYA LTD.....PLAINTIFF

VERSUS

ANAGRO (K) LIMITED.....DEFENDNT

R U L I N G

The plaintiff filed this suit against the defendants by way of a plaint on 24th July, 2002 seeking judgment for Sh.1,500,520.78 together with interest thereon at 2.5% per month from 1st June, 2002 as well as costs of the suit.

The 1st defendant filed its defence as well as counterclaim on 28th August, 2002. In the counterclaim it sought judgment for Sh.9,976,526/= with costs and interest as well as damages while the 2nd defendants also filed a defence as well as a counterclaim on the same and prayed for Sh.50,000/= with costs and interest. The plaintiff filed defence to both counterclaims on 13th September, 2002.

On 26th September, 2002, the plaintiff requested for particulars under order 6 Rule 8 of the Civil Procedure Rules. By letter dated 14th January, 2003 the defendants supplied the particulars which they say were adequate. But the plaintiff was not satisfied with the particulars he was supplied with. On 21st February, 2003 he filed this application by way of Chamber Summons seeking for orders.

- (1) That the defendant do within 14 days from the date of the order herein deliver further and better particulars of the requests for particulars dated 26th September, 2002.
- (2) That the defendants do within 14 days from the date of the order herein file their lists of documents.
- (3) In default defences be struck out.
- (4) That the costs of the application be awarded to the plaintiff in any event.

The application is based on the grounds that:-

- (a)The defendants have failed to provide further and better particulars requested.
- (b)The defendants have failed to file a list of documents as required by Order 10 Rule 11A of the Civil Procedure Rules.

Mr. Ngatia filed a replying affidavit on behalf of the defendants. In his submissions he stated that in respect of the list of documents, the plaintiff had filed this application for orders that the defendants be compelled to file their lists of document even before the plaintiff itself had filed its list and secondly that no order is necessary to compel the defendants to file a list of documents. I agree with this submission. And on the issue of particulars he submitted that he had supplied adequate particulars to the plaintiff.

But Mr. Gitonga for plaintiff took issue with paragraph 10 of the counterclaim among others in which the defendant has given particulars on the OCS Karatina Police Station .

“10” The Officer in Charge, Karatina Police Station declined to allow the station to be utilized for the intended illegal activities consequently the 2nd defendant was released from the unlawful arrest.”

Mr. Gitonga wanted the names of the said officer commanding Karatina Police Station at the time to be supplied to him.

With due respect to counsel this is not necessary. The said Officer Commanding Karatina Police Station had made a personal decision and declined to allow his Police Station to be utilized for the intended illegal activities as alleged. It is the duty of the party who so alleges to call that particular officer to testify in order to prove his case. He cannot call any other officer and therefore it is not necessary to supply his name in the particulars as sought by the plaintiff.

For the above reasons the plaintiff’s application is dismissed with costs to the defendant. Dated at Nairobi this 6th day of June, 2003.

J.L.A. OSIEMO

JUDGE

Court:

Ruling delivered in the presence of:

- 1. Miss Ngugi for applicant**
- 2. Mr. Ngatia for respondent**