



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 363 OF 2001

MOHANSONS FOOD DISTRIBUTORS LTD. PLAINTIFF

VERSUS

LEISURE LODGE LTD. DEFENDANT

RULING

In this case the plaintiff sued for Shs.3007,139.20 being the price of goods sold and delivered to the defendant during the years 1996 – 2001. The defendant filed a statement of defence comprising 2 paragraphs one of which is a general denial of the claim. The statement of defence was followed by a request for particulars which when not answered the defendant applied by Chamber Summons for orders to supply the answers. The particulars requested for were

- (a) how the sum of shs.3007,139.20 was made up identifying the relevant documents relied on.
- (b) identify the orders and the exact dates in the years 1996 – 2001 when the orders were given.
- (c) specifying the nature of goods supplied and the exact dates when the goods were sold and delivered.

The request was filed on 30.10.2001. On 30.11.2001 the plaintiff, without supplying the particulars requested for proceeded and filed this application under order 6 rule 13(1)(b) and (c) of the Civil Procedure Rules asking for the statement of defence to be struck out and judgment entered as prayed in the plaint on the grounds that the claim being a liquidated demand and the statement of defence being a mere general denial, frivolous, vexatious and scandalous, the same should be struck out. The claim is also said to be admitted in correspondence between the parties.

The application is supported by affidavit to which is attached numerous documents to support the claim namely invoices delivery notes and statements all numbering 202 pages.

In replying affidavit the defendant through its accountant Suresh Patel states that the invoices and documents exhibited by the plaintiff showing particulars of the claim were never in the hands of the defendant and that they were delivered to the employee R.K. Shariff who passed them to the interim liquidators to settle.

The copy through R.K. Shariff sent the documents to interim liquidators under his letter dated 28.3.2001 who wrote back to plaintiff on 2.4.2001 saying that the account should be paid by the defendant. The defendant attempted to settle the matter by paying instalments and on 8.6.2001 issued, a cheque on the

sum of shs.55,565/= 'on account' being first instalment. This mode of payment was rejected by the plaintiff through their advocate under the letter dated 28.6.2001 returning the cheque. It is to be noted here that although the particulars of invoices and statements were served upon the defendant well before the hearing of the application no attempt had been made to amend the defence which remained a general denial to the time of hearing this application. Nevertheless the defence of the defendant to this case can be gathered from the affidavit in replying to this application. It shows that

(a) for the time the defendant company was under the management of the interim liquidators the liability of company's debts was on the shoulders of the interim liquidators not the company.

(b) that if the defendants were supplied with particulars as requested they would have amended their defence.

(c) That the defendants intended to file third party notice against the interim liquidators.

After perusing the record in this file I note that the claim is similar to that made in HCC No.371 of 2001 Muthaiga Mini Market Ltd. Versus Leisure Lodges Ltd. In that case a copy of the ruling which will be filed in this case, I found that the interim liquidators were not at any time during their tenure personally liable to pay these trade bills. They acted as agents of the company. The debts incurred during their stewardship must be met by the company. In addition here as well as in that case the particulars requested for were not material to this suit and in fact they were known to the company by 28.3.2001 well after the affairs of the company had been handed over to its directors and before this suit was filed. There is an attempt to delay the plaintiff's claim. Further more in this case there is clear admission by the defendant by correspondence before suit was filed.

Lastly as in that case the defendant has commenced third party proceedings (see Chamber Summons dated 22.1.2002) where the dispute between themselves and interim liquidators will surely be sorted out. In the circumstances I find that the application has merit and the same is allowed with costs of the suit and this application. Application for particulars dated 29.10.2001 is overtaken by this ruling and is dismissed with costs.

Dated this 18th day of June 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Mr. Kagram

Ms. Anita shah

Ms Anita Shah: -

I apply for 14 days stay and copies of proceedings and ruling .

Mr. Kagram: -

No objection.

Court: -

Orders granted as prayed.

J. KHAMINWA

COMMISSIONER OF ASSIZE

9/12/2002

Before court

Mr. Inamdar

Mr. Kagram

The attention of court is to be drawn to the ruling page 9. There is need to grant leave as per application 22/1/2002.

Court

This application is for leave to serve third party Notice. There is no objection from plaintiff's counsel. The same is granted as prayed.

J. KHAMINWA

COMMISSIONER OF ASSIZE