REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 430 OF 2000

EVANS OCHIENG OTIENO ……...…… PLAINTIFF

VERSUS

MARK MOODY ……... 1ST DEFENDANT

LURE-FLASH KENYA (EPZ) LIMITED ……....…… 2ND DEFENDANT

RULING

This is an application under O. VI Rule 13 (1) (a) of the Civil Procedure Rules to strike out the plaint filed in this matter on 9.3.2000 on the ground that it discloses no reasonable cause of auction against the defendants.

The material paragraphs of the plaint state as follows:-

> "1. By an agreement dated 27th October, 1998 the plaintiff was engaged by the 1st defendant to supply woven flies to Lureflash International Limited and later Lureflash Kenya (EPZ) Limited. The plaintiff was to work in conjunction with one Dionysius Karomo to supply the fishing flies to the defendants.
>
> 2. That on 2nd November, 1999, the plaintiff signed an oppressive agreement under duress exerted by the 1st defendant and the monies supposed to be paid to him under the agreement Sterling Pounds 3332.64 and 975.82 were a miscalculation of the sum truly owed to the plaintiffs and erroneously calculated by the 1st defendant.
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> 3. The 1st defendant being a director in the 2nd defendant's company and the plaintiff having supplied woven flies to the 2nd defendant company under the authority of Mr. Mark Moody was compelled to sign an oppressive agreement drawn with bad intention, without discussing the figures therein and hence with the intent of frustrating the plaintiff. Full particulars shall be furnished at the hearing hereof. The correct amount owed to the plaintiff is Sterling Pounds 5802.39 or Kshs.673,077.24.
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> 4. The 1st defendant further owes the plaintiff Kshs.150,000 which is in the form of stock, mainly hooks for flies which the plaintiff bought on agreement and understanding that the defendant would give him job orders."

Although the 4 paragraph and indeed the rest of the plaint are not the best examples of well drafted pieces of legal material, they at the very least disclose the following:-

1. That there was an agreement dated 2.11.1999 between the plaintiff and 1st and 2nd defendants

for the supply of woven flies (paragraph 4).

2. That the plaintiff supplied the woven flies pursuant to the agreement (paragraph 6).

3. That the correct amount payable under the contract was Sterling Pounds 5802.39 or Kshs.673,077.24 and not Sterling Pounds 3332.64 and Sterling Pounds 975.82 (paragraphs 5 and 6).

4. That the 1st defendant owes the plaintiff a further sum of Shs.150,000/= in respect of hooks for flies which the plaintiff bought pursuant to the agreement on the understanding that the 1st defendant would give the plaintiff job orders (paragraph 7).

5. That the defendants have failed to pay the sums due under the contract despite demand having been made (paragraph 8).

As aforesaid, the drafting of the plaint is clearly sloppy. Little attention was paid to the form and wording of the paragraphs resulting in some confusion as to certain particulars of the agreement (contract) and the exact amounts due thereunder. Despite those defects and numerous other errors, the essential elements (as shown above) have all been pleaded. As to the defects, I am of the opinion that they can be cured not only by amendment but also by provision of any particulars considered necessary.

The defects do not in my view call for the striking out of the plaint. As was observed by Madan J. A. in the case of D. T. Dobie & Company (Kenya) Limited and Joseph Mbaria Muchina (Court of Appeal, Civil Appeal No. 37 of 1978):-

> ***"It is relevant to consider all averments and prayers when assessing under O. 6 rule 13 whether a pleading discloses a reasonable cause of action …. The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action …… No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as t o be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness wit hout the full facts of a case before it."***

For the above reasons, I am of the view that the application by the defendant is incompetent and should not be granted. I dismiss it with costs.

Dated at Nairobi this 16th day of January, 2001.

T. MBALUTO

JUDGE