



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1091 OF 2000

WAGAKI-IMPETUS LIMITED.....PLAINTIFF
Versus
TERESIA WANDERI.....DEFENDANT

RULING

The applicant has moved this court under Order VI rules 8 (2) (5) and 16 of the Civil Procedure Rules and all the enabling provisions of the law. It seeks an order to compel the defendant to supply the particulars of her defence dated 26th September 2000 and that in default of compliance the defence be struck out with costs without further orders. The applicants had served the defendant with a request for particulars on 21st October 2000.

The application is opposed and the defence counsel has sworn the replying affidavit. He depones that the particulars being sought border on evidence which can only be canvassed at the time of hearing of the matter. He urges the court to dismiss the application as it is otherwise an abuse of the process of the court.

Before I proceed I feel that it is imperative that I give a brief summary of the facts leading to this application. By its plaint filed on 13th July 2000, the plaintiff claims that at all material times it was and still is the registered owner of the property known as L.R. Dagoretti/Riruta 3150 (hereinafter called “the subject premises”). It states that the defendant has unlawfully maintained a temporary structure on the subject premises, which she has let out and for which she receives rent, which it claims is being done without its consent. The plaintiff therefore claims that it has been deprived of its right to occupy and enjoy quiet possession of the said premises, and has thereby suffered loss and damage. It prays for orders that the defendant do forthwith demolish and remove her structures from the subject premises.

The defendant however avers that she is the owner of the subject premises having purchased it in 1970 since when she claims, she has been in occupation. She also claims that there are three other pending civil suits in respect of the same property. It is however not indicated whether the said suits are between the same parties.

Order VI rule 8 (2) and (5) of the Civil Procedure Rules under which this application is made stipulate as follows:

“(2) The court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or statement of the nature of the case on which he relies, and the order may be made on such terms as the court thinks just.

(5) No order for costs shall be made in favour of a party applying for an order who has not just applied by notice in Form No. 14 of Appendix B which shall be served in duplicate.”

It is not disputed that the defendant had been served with the relevant notice on 21st October 2000.

The applicant seeks particulars in relation to the defendant’s title document, the sale agreement by

which she acquired the property and also, of the other three pending suits that are mentioned in the defence. It was the submission of Mr. Angima for the applicants that they were entitled to particulars now being sought especially in view of the fact that both parties had pleaded ownership of the subject premises. He relied on Odgers Principles of Pleadings Without Tears 20th Edn., at page 156 where it is stated that:

“Functions of particulars are meant to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that cause is to be proved”.

Both parties claim ownership of the subject property. In what better way or manner can the parties to the suit save their time and expenses than in establishing the ownership of the subject property at this stage, and also whether the other three suits are relevant to this suit? Having pleaded the three suits, then the defendant is under an obligation to furnish the plaintiff with details of at least the parties therein. To my mind, it cannot be said that the above request and the required particulars hinge on evidence, and I therefore disagree with Mr. Nyakundi’s line of submission that the particulars sought are evidence.

If the defendant was to furnish the required particulars and they were found to be supportive of her plea then, it would either limit the issues or on the other hand perhaps bring the suit to an end. Either way it would save time and costs. Neither party should ever be taken by surprise at the trial. If upon being furnished with the required particulars a plaintiff finds that he has no cause of action against the defendant, or that he would need to amend his pleadings, he would have ample time to take the most appropriate steps without further ado. In my humble opinion, there is no need to ambush him at the trial. I believe that every court should encourage parties to furnish particulars when called upon to do so for it saves litigation time, otherwise how would the courts expedite disposal of suits.

In view of the above, it is my humble opinion that the plaintiffs request is reasonable and I do allow it. In the circumstances, the defendant should provide the required particulars within the next fourteen days, failure of which the defence stands struck out with costs, without further orders of this court.

The applicant shall otherwise have the costs of this application.

It is so ordered.

Dated and delivered this 29th day of May 2001.

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of:

Mr. Angima for the plaintiff/applicant

No appearance for the defendant/respondent