



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1122 OF 2000

ALARIC B. Da CUNHA
PLAINTIFF

VERSUS

NAIROBI GOLF HOTELS (K) LIMITED

t/a THE WINDSOR GOLF & COUNTRY CLUB ...
DEFENDANT

RULING

This is an application under O. VI Rule 8 of the Civil Procedure Rules for an order that the defendant do supply further and better particulars of paragraphs 9 and 10 of the Amended Defence, Set Off and Counter-claim filed in this matter. The application is based on the ground (stated in the body of the application) that the particulars filed by the defendant in answer to the plaintiff's request for particulars are grossly inadequate and the plaintiff will be taken by surprise at the trial, if any, of the suit.

The two paragraphs of the defence and counter-claim in respect of which particulars were sought stated:-

“(9). The defendant reiterates paragraphs 1 to 8 above and counterclaims against the plaintiff the sum of Kshs.15,368,308/15 being the sum of money lost by the defendant through the plaintiff's misconduct and or negligence in the course of his employment.

PARTICULARS OF MISCONDUCT AND OR NEGLIGENCE

- (a) Failing to perform his duties in accordance with his contract of employment.***
- (b) Failing to oversee and be responsible for the defendant's financial and operational matters as expected of him.***
- (c) Failing to brief and or bring to the attention of the Board of Directors of the defendant impending financial and or operational difficulties before they took root.***
- (d) Failing to supervise his subordinates as expected of him.***
- (e) Failing to observe defendant's operational procedures.***
- (f) Failing to safeguard the defendant's interest.***
- (g) Failing to abide by legislative requirements imposed on the defendant.***

(10) In the alternative but without prejudice the defendant shall aver that the plaintiff acted incompetently and unprofessionally in the course of his duties giving rise to a loss of Kshs.15,368,308/15 being incurred by the defendant and thereby being in breach of his contract of employment.”

The particulars sought of the above pleadings were:-

“1. OF PARAGRAPH

(i) of the alleged misconduct and or negligence on the part of the Plaintiff please provide particulars:

(a) of the alleged failure of the Plaintiff to perform his duties in accordance with his contract giving precise details the act or acts complained of and the date or dates on which the same took place. Please specify how these acts were in breach of his contractual obligations. Were the alleged failures of the Plaintiff brought to his attention and if so the details thereof including the date or dates on which he was so informed.

(b) of the alleged failure of the Plaintiff to oversee and be responsible for the Defendant’s matters as expected of him, giving precise details of the acts complained of, the date or dates on which the Plaintiff allegedly so failed, and the manner in which the Plaintiff so failed to carry out his duties. Were the alleged failures of the Plaintiff brought to his attention and if so the details thereof including the date or dates on which he was so informed. (c) of the alleged failure of the Plaintiff to bring to the attention of the Board of Directors of the Defendant impending financial and operational difficulties before they took root giving precise details of the occasions when the Plaintiff so failed and the date or dates when he so failed. Were the alleged failures brought to his attention and if so the details thereof including the date or dates on which he was so informed.

(d) of the alleged failure of the Plaintiff to supervise his subordinates giving precise details of acts complained of and the date or dates on which he so failed. Were the alleged failures brought to his attention and if so the details thereof including the date or dates on which he was so informed.

(e) of the alleged failure of the Plaintiff to observe the Defendant’s operational procedures giving precise details of the acts complained of and the date or dates when the Plaintiff failed to do so. Were the alleged failures brought to his attention and if so the details thereof including the date or dates on which he was so informed. (f) of the alleged failure of the Plaintiff to safeguard the Defendant’s interests giving precise details of how and when he allegedly failed so to do and the date or dates thereof. Were the alleged failures brought to his attention and if so the details thereof including the date or dates on which he was so informed.

(g) of the alleged failure of the Plaintiff to abide by legislative requirements breached by the Plaintiff, the manner in which he allegedly breached the same and the date or dates when he did so. Were the alleged failures brought to his attention and if so the details thereof including the date or dates on which he was so informed.

(ii) of the alleged loss and damage suffered by the Defendant please provide detailed particulars:

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(a) of how the sum of Kshs.7,847,148/= is made up, the date or dates on which the same were incurred identifying the documents in support thereof and state the manner in which the Plaintiff was responsible therefor. Were the nature of the alleged losses notified to the Plaintiff and if so how and when.

(b) of how the sum of Kshs.4,034,449/95 is made up, the date or dates on which the alleged loss

took place, the manner in which the loss occurred identifying the documents in support thereof, and state the manner in which the Plaintiff was responsible therefor. Were the nature of the alleged losses notified to the Plaintiff and if so how and when.

(c) of how the sum of Kshs.275,374/20 is made up, the date or dates on which the alleged loss took place, identifying the documents in support thereof and state the manner in which the Plaintiff was responsible therefor. Were the nature of the alleged losses notified to the Plaintiff and if so how and when.

(d) of how the sum of Kshs.2,268,286/= is made up the date or dates on which the alleged losses took place, identifying the documents in support thereof and state the manner in which the Plaintiff was responsible the refor. Were the nature of the alleged losses notified to the Plaintiff and if so how and when.

2. OF PARAGRAPH 10 – Please provide particulars: -

(a) of the allegation that the Plaintiff acted incompetently and unprofessionally giving precise details of how and when he so acted giving date or dates and the manner in which he allegedly caused a loss to the Defendant in the sum of Kshs.15,368,308/15 and state when the Plaintiff was notified about his alleged conduct and if so how and when.

(b) of the allegation that the Plaintiff was in breach of his contract of employment giving precise details of how and when he allegedly committed a breach of contract giving date or dates and state whether the Plaintiff was notified about his alleged breach and if so how and when.

(c) of the allegation that the Defendant incurred a loss of Kshs.15,368,308/15 giving a detailed breakdown thereof if other than as supplied under (ii) (a) (c) and (d) hereof.”

The answers to the request for particulars were filed in court on 10.4.2001. In my view they are woefully inadequate and the defendant will have to give further and better particulars. My reasons for those views are as follows:-

(a) Although the request for particulars is broken down and itemised in paragraphs 1(i) (a) up to (g) (ii) (a) up to (d) and 2(a) up to (c), the answers thereto do not follow that arrangement. For that reason it is extremely difficult if not impossible to determine which purported particular is in answer to what request.

(b) Some of the particulars are general and vague and clearly inadequate. For instance the very first particular provided by the defendant states:-

“He failed to properly oversee and take responsibility for all financial and operational matters of the hotel.” That particular is too general and does not make the plaintiff any the wiser as to what he is being accused of. The same comment applies to the particulars contained in the last two paragraphs, the 1st particular in page 2 and the last in page 3. In respect of all those, further and better particulars will have to be provided.

In view of what I have stated above, the application is allowed and the defendant ordered to file and serve upon the plaintiff within the next 14 days of the date hereof further and better particulars of paragraphs 9 and 10 of its defence and counter-claim failing which the two paragraphs will stand struck out. It is further ordered that the particulars will be arranged in paragraph and will deal with each distinct request as it appears in the request for particulars. The defendant will bear the plaintiff’s costs of this application.

Dated at Nairobi this 3rd day of May, 2001.

T. MBALUTO

JUDGE