



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 489 OF 2014

SOMOCHEM KENYA LIMITED.....PLAINTIFF

-VERSUS -

GRAND PAINTS LIMITED.....1ST DEFENDANT

ABDULLAH D. RAJAB.....2ND DEFENDANT

HUSSEIN ABDULLAH RAJAB.....3RD DEFENDANT

MAHMUD RAJAB.....4TH DEFENDANT

RULING

1. The plaintiff has asked the court to strike out the Defence as it raises no triable issues, is a sham and is frivolous and vexatious. As far as the plaintiff was concerned, the Defence on record does not raise any issue which could require the case to proceed to trial.
2. In the Defence, it is indicated that the Defendant denies the contents of paragraphs 6, 7, 8,9,10 and 11 of the plaint.
3. Those paragraphs set out the basis of the plaintiff's claim, which is premised, first, upon the request by **GRAND PAINTS LIMITED**, that the plaintiff should supply to it, goods on credit. The plaintiff said that it agreed to supply goods to the 1st Defendant.
4. The plaint states that the 2nd, 3rd and 4th defendants executed unconditional guarantees in favour of the plaintiff, as security for the debt which the 1st defendant owed, arising from the plaintiff's supply of goods on credit.
5. The plaintiff not only filed a Witness Statement, which was then served upon the defendants, but also provided the following documents;

- i) Guarantee dated 11th November 2013;**
- ii) Statement of Account;**
- iii) Demand letter to the 1st Defendant; and**

iv) Demand letter to the Guarantors.

6. Notwithstanding that fact, the defence fails to give any reason why the defendants or any of them denied the contents of the plaint.
7. A bare denial, such as that tendered by the defendants does not give rise to any triable issues.
8. If the 1st defendant did not enter into a contract with the plaintiff, that could have been specifically pleaded.
9. Or if there was a contract, but either the plaintiff failed to supply goods to the 1st Defendant, or if the said defendant had already paid for the goods supplied, that should have been specifically pleaded.
10. Meanwhile, as regards the Guarantors, **ABDULLAH D. RAJAB; HUSSEIN ABDULLAH RAJAB** and **MAHMUD RAJAB**, they should have been explicit about the exact assertions that they were denying.
11. For instance, if they had not signed the Guarantee; or if the plaintiff did not supply goods to the 1st defendant; or if the 1st defendant settled all the bills for the goods supplied to it; those facts should have been specifically pleaded.
12. On the one hand, the defendant denies the Guarantee, but on the other hand, the Defence admits that the Guarantee was a continuing guarantee. It is not possible for a non-existent Guarantee to also be a continuing guarantee or any other kind of guarantee.
13. By putting forward such inconsistent pleadings in the Defence, the defendants are deemed to be trifling with the court. Such a line of Defence is said to be frivolous.
14. And because the defence put forward is lacking in foundation, there is no way it could be sustained.
15. The foundation of a defence is to be found in the reasons proffered to demonstrate that it has a basis.
16. A defence which is lacking in foundation cannot be arguable, and therefore the only function it could perform if allowed to remain on the record, is to vex the plaintiff.
17. The Defence herein is vexatious. Apart from that, it is also evasive and unintelligible.
18. I have no hesitation in holding that the defence is so weak that it cannot be given a lease of life, even if the defendants attempted to amend it.
19. Perhaps the defendants also reached a similar conclusion, because they found no reason to come to court, to fight-off the plaintiff's application to strike out the Defence.
20. In the circumstances, I strike out the Defence dated 26th November 2014, and I grant Judgement in favour of the plaintiff as prayed in the Plaint dated 30th October 2014.
21. The costs of the application dated 7th July 2015 are awarded to the plaintiff.

DATED, SIGNED and DELIVERED at **NAIROBI** this 16th **day** of February 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Kahura for Ogunde for the Plaintiff

No appearance for the 1st Defendant

No appearance for the 2nd Defendant

Collins Odhiambo – Court clerk.