



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 482 OF 2004

PIONEER HOLDINGS (AFRICA) LIMITED.....PLAINTIFF

-VERSUS -

JOSE EDUARDO MULLY.....1ST DEFENDANT

DANIEL NJUGUNA..... 2ND DEFENDANT

IMMACULATE OWAJA.....3RD DEFENDANT

CORNELIUS WAITHAKA.....4TH DEFENDANT

(Being sued in their representative capacity as the registered officials of the Universal Church of the Kingdom of God)

RULING NO.2

1. The application before me is for Judgement on Admission.
2. The plaintiff asserted that the defendants, through the duly authorized officials of the **UNIVERSAL CHURCH of THE KINGDOM of GOD**, had admitted owing the plaintiff the sums claimed in the Plaintiff.
3. The said plaintiff contains a claim for Kshs. 3,263,013/- plus interest thereon at the rate of 2.5% per month, from the date when the rent for each month became payable.
4. By way of a background, the defendant executed a lease agreement in respect of 2 shops, which are located at the defendant's building called **PIONEER HOUSE**.
5. According to the plaintiff, the defendant defaulted in the payment of the agreed rent. Ultimately, the plaintiff accepted the surrender of the premises which had been let out to the defendant.
6. By the time the plaintiff accepted the surrender of the premises in issue, it is said that the outstanding rent was in the sum of Kshs. 4,307,018/-.
7. The plaintiff's further claim was that after the defendant had handed the premises back to the plaintiff, the parties agreed that the outstanding rental arrears were to be repaid through monthly installments of Kshs. 36,000/-.

8. After the parties had entered into the agreement for the payment of the outstanding rents, the defendant is said to have made payments for a few months.

9. During the few months when the defendant made payments, the plaintiff says that it received a total of Kshs. 1,044,005/- from the defendant. Therefore, after giving credit for the sums received, the plaintiff says that the defendants still owed it Kshs. 3,263,013/-, as at June 2000.

10. That explains the basis for the plaintiff's claim, as set out in the plaint.

11. After being served with the plaint, the defendants filed a Defence on 9th August 2005. The said Defence is very brief, and I think that it is prudent to set it out herein, as follows;

"DEFENCE

1. Save as hereinafter specifically admitted the defendants denies each and every allegation contained in the plaint as if the same were herein set out and traversed seriatim.

2. The defendants admit the description of the plaint but denies their description as contained in paragraph 2 of the plaint and specifically deny that they were the officials of the Society as alleged or at all and puts the plaintiff to strict proof thereof.

3. The defendants are stranger to and therefore do not admit the allegations contained in paragraphs 3,4,5,6,7 and 8 of the Plaint and puts the plaintiff to strict proof thereof.

4. The Jurisdiction of this Honourable Court is admitted.

REASONS WHEREFORE the defendants pray that the plaintiff's suit be dismissed with costs"

12. When canvassing the application herein, the plaintiff submitted that the Defence lodged by the defendants were general statements of denial, which did not raise any triable issues.

13. In support of the application, the plaintiff pointed out that the parties executed an Agreement for Lease in respect to each of the 2 rooms which the defendant was leasing from the plaintiff.

14. Copies of the two Lease Agreements were made available to the court: they are dated 1st April 1999 and 20th April 1999, respectively.

15. It is common ground that by a letter dated 27th May 1999 the defendant tendered to the plaintiff, a Notice terminating the Lease Agreements.

16. It is also common ground that the plaintiff rejected the Notice issued by the defendant in May 1999.

17. However, on 20th April 2000, the plaintiff wrote to the defendant, expressing a willingness to accept the surrender of the leased premises.

18. According to the plaintiff, the parties did execute an agreement dated 25th April 2000, through which the defendant acknowledged that it owed Kshs. 4,307,018/-.

19. But the defendants denied any knowledge of the alleged acknowledgement. As far as the defendants were concerned, the signatories who purported to sign on behalf of the church, were not known to the defendants.

20. The defendants pointed out that the alleged authorized officers were not named, and also that there was no indication about who had authorized them.

21. In his replying affidavit, the 4th defendant, **CORNELIUS WAITHAKA**, said that although Pastor Nunes was one of the church's authorized signatories, his signature was not on the letter dated 25th April 2000.
22. Mr. Waithaka also deponed that the church had never had any official named Pastor Macloud.
23. Thirdly, the defendants emphasized that it was the practice of the church to authenticate all documents by affixing the church stamp, as was done on the Lease Agreements.
24. As the letter dated 25th April 2000 did not have the church stamp, the defendants submitted that it was not authentic.
25. The plaintiff reasoned that the defendants denial of the agreement was a belated attempt to go back on the defendants' admissions. In the opinion of the plaintiff, if the defendants were legitimate, in their denial of the signed agreements, they could have raised such denials before the plaintiff filed suit.
26. In the circumstances, as the terms of the Admissions by the defendant were clear, unequivocal and unambiguous, the plaintiff urged the court to grant judgement against the defendants, as prayed in the plaint.
27. The law governing applications for Judgement on Admission is clear. If the defendant makes a plain and obvious admission of his liability, the court would enter judgement based on such admission.
28. It is also clear that the admission does not have to be contained in the Defence. It can be contained in any other document or documents, provided that the said admission left no room for doubt; concerning the intention of the parties.
29. In this case, the Defence expressly denied the description of the defendants, as appearing in paragraph 2 of the plaint.
30. The said paragraph in the plaint, was in the following terms;
- “The Defendants are the President, Vice President, Secretary and Treasurer, respectively of the Universal Church of the Kingdom of God, a Society registered in Kenya. Service of process will be effected through the plaintiff's advocates office. The Defendants are sued in a representative capacity on behalf of all members of the said Universal Church of the Kingdom of God (“the society”).***
31. Clearly, the defendants denied holding the respective offices assigned to them, in the Plaint. I understand that to mean that if it was because they were deemed to hold those offices that the plaintiff sued them, for and on behalf of all the members of the church, the defendants were not liable, as they did not hold those offices.
32. The court records show that the plaintiff made an *ex parte* application for leave to institute these proceedings against the 4 named defendants, in their capacity as the registered officials of the church.
33. As the court granted leave to the plaintiff without having heard the defendants; and as the defendants have categorically denied being the registered officers of the church, the defendants are yet to have an opportunity to clarify why they rejected the contention that they were holding the high offices which the plaintiff ascribed to them.
34. By the same token, the plaintiff would be obliged to offer proof that the defendants were indeed, the registered officials of the Universal Church of the Kingdom of God. There cannot be an assumption or presumption in that regard. And unless sufficient cogent proof is provided by the plaintiff, the defendants would not be held liable.

35. Accordingly, the Defence raises a triable issue.

36. Secondly, as it is the defendants who are alleged to be liable, yet the plaintiff has not linked any of them to the alleged admissions, I hold the view that the plaintiff would have to demonstrate how the admissions, if any, by persons other than the defendants, could cause liability to attach on the defendants.

37. Thirdly, it is common ground that the church gave a Termination Notice in May 1999. Although the plaintiff rejected that Notice, the defendants assert that they handed over the premises to the plaintiff in or about May 1999.

38. However, the plaintiff insists that the Lease Agreement was only terminated in or about May 2000; and also that it is at that time when the defendants handed over the premises.

39. On a *prima facie* basis, there appears to be merit in the plaintiff's contention concerning the date when the premises was handed over to the plaintiff. I say so because of the letter dated 3rd May 2000, which appears to have been endorsed by both the plaintiff and the secretary to the church, indicating that that is when the church handed over the keys to the premises.

40. Nonetheless, the question would be whether or not the alleged handing over of the 2 keys constituted the termination of the Lease Agreement.

41. The question could be put in a different way;

“Did the plaintiff have lawful authority to reject the termination notice issued by the church in May 1999?”

42. On the other hand, if the church were to insist that the lease was terminated in 1999, it would have to grapple with the question about why the church continued making payments long after the alleged termination.

43. Finally, the statements of account produced by the plaintiff reflect a total of Kshs. 2.0 million in respect to Development Levy. That is substantial portion of the sums claimed from the defendants, on account of rent. The plaintiff would need to lead evidence to prove how the claim for Development Levy could be sustained against the defendants.

44. In the result, the Defence raises triable issues, which can only be determined after a full trial. Therefore, the application for Judgement on Admission is dismissed. The plaintiff is ordered to pay to the defendants, the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 10th day of October 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Macharia for Ngatia for the Plaintiff

Ohenga for Macharia for 1st the Defendant

Ohenga for Macharia for 2nd the Defendant

Ohenga for Macharia for 3rd the Defendant

Ohenga for Macharia for 4th the Defendant

Collins Odhiambo – Court clerk.