



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

CIVIL CASE NO 840 OF 2010

AGILITY LOGISTICS LIMITED.....1ST PLAINTIFF
AGILITY LOGISTICS INTERNATIONAL B.V.....2ND PLAINTIFF
THE PUBLIC WAREHOUSING COMPANY K.S.C.....3RD PLAINTIFF
VERSUS
AGILITY LOGISTICS KENYA LIMITED.....DEFENDANT

RULING

INTRODUCTION

1. The Defendant's Chamber Summons application dated 24th September 2014 and filed on 26th September 2014 was brought under the provisions of Section 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. It sought the following orders:-
 1. **THAT the Plaintiffs be compelled to serve the Defendant with particulars of the Plaintiff filed herein in terms of the Defendant's Request for Particulars served upon the Plaintiffs on 17th February, 2011.**
 2. **THAT the costs of this Application be provided for.**

THE DEFENDANT'S CASE

2. The application was supported by the Affidavit of Ngichiri Thomas M. Kamau, a Director of the Defendant Company. It was sworn on 24th September 2014. There was also a Further Affidavit sworn on 12th February 2015 by the said Director. The Defendant's Written Submissions were dated 16th March 2015 and filed on 18th March 2015.
3. The Defendant averred that on or about 8th December 2010, the Plaintiff filed the present suit and thereafter served the Defendant with Summons To Enter Appearance. Subsequently, the Defendant entered appearance and filed a Defence on 17th February 2011. On the said date, it also served the Plaintiffs with a Request for Particulars dated 14th February 2011.
4. It further averred that on 29th October 2014, the court ordered the Plaintiffs to serve it with the particulars. However, it was not satisfied with what the Plaintiff served it with in response to the Request for Particulars. According to the Defendant, the purported Answer to Request for

- Particulars did not address any of the issues raised in the Request for Particulars.
5. Its case was that the Plaintiffs had since refused, neglected and/or failed to render to it the necessary particulars in question as required by law and in the form prescribed. It contended that in the absence of the particulars requested for, it could not possibly to fully understand or appreciate the total case brought against it by the Plaintiffs.
 6. In light of the foregoing, the Defendant urged the court to compel the Plaintiffs to render particulars of the Plaintiff it had requested for.

THE PLAINTIFFS' CASE

7. The Plaintiffs opposed the application through the Response to the Request for Particulars filed on 19th December 2014. They filed their Written Submissions dated 20th March 2015 on 23rd March 2015.
8. They averred that they had supplied all information that had been requested by the Defendant. They referred to the documents in which all information called for had been supplied. These included the Further Affidavits of Dev Kumar Bij that were sworn on 25th February 2011 and 8th December 2010.
9. The Plaintiffs contended that the questions posed by the Defendant were investigative and that the same could be raised during cross examination of the Plaintiffs' witness. They therefore urged the court to dismiss the Defendant's present application with costs to it.

LEGAL ANALYSIS

10. The Defendant sought orders that the Plaintiffs be compelled to serve it with particulars of the Plaintiff in terms of its said Request for Particulars. The Plaintiffs filed a response to the said Request for Particulars on 19th December 2014. However, the Defendant was dissatisfied with the said response on the ground that the said response did not answer any of the questions it had raised in the said Request for Particulars.
11. It was further its submission that the said response was a mere generality of the Plaintiff and merely referred to certain affidavits. It referred the court to the case of **Baily vs. Federal Commissioner of Taxation [1977]** as mentioned in the case of **Mae Properties Limited vs William Olotch [2014] eKLR** in which the court held that particulars were an important function in the conduct of litigation.
12. The issue of particulars is provided for under Order 2 Rule 10 of the Civil Procedure Rules 2010. It provides as follows:-

“(1) Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing:-

(a) Particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies; and

(b) Where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

13. It provides that every pleading shall contain necessary particulars of any claim. The definition of necessary particulars is not exhaustive but it gives an idea of what is deemed to be necessary particulars. The particulars arise from the facts a party intends to rely on.
14. This court perused the Plaintiff wherein the Plaintiffs sued the Defendant for passing off. They alleged that the Defendant had infringed on their trademark by registering itself using a name similar to theirs. The Plaintiffs provided the particulars of passing off. They also gave the background to their claim. These were the particulars that the Plaintiffs intend to rely on. It was the view of the court that the same sufficed as the necessary particulars envisaged under Order 2 Rule 10 of the Civil Procedure Rules and that any other information the Defendant may need

- could be obtained at the hearing through the evidence that would be adduced.
15. The court further perused the affidavits referred to by the Plaintiffs in response to the Request for Particulars and note that the said affidavits, by and large, contained the information that had been requested by the Defendant.
 16. Essentially, the purpose of pleadings is to give the opponent a fair and proper notice of the case to enable them to prepare their case. It is not intended that such request should take the form of a fishing expedition. This is a case on intellectual property. After perusing the pleadings by the Plaintiffs, the court has established that the Plaintiffs had provided the necessary particulars in pleading their claim. It would be elusive to determine what **‘necessary particulars’** are by the terms of an opponent, in this case the Defendant.
 17. Having considered the Defendant’s application affidavit evidence and the written submissions by both parties, this court came to the conclusion that the Plaintiffs sufficiently responded to the Defendant’s Request for Particulars. Indeed, any other questions as posed by the Defendant which it feels has not been adequately addressed can be dealt with at the hearing of this matter.

DISPOSITION

18. The upshot of this court’s ruling was that the Defendant’s Chamber Summons dated 24th September 2014 and filed on 26th September 2014 was spent, the Plaintiffs having provided the necessary particulars requested for the same is hereby dismissed. The costs shall be in the cause.
19. It is so ordered.

DATED and DELIVERED at NAIROBI this 14th day of July 2015

J. KAMAU

JUDGE