



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT

Civil Appeal 476 of 2007

KARTAR SINGH DHUPAR & Co. LTD. APPELLANT

VERSUS

GREYSTONE WORKS LTD. RESPONDENT

J U D G M E N T

The Appellant was the Defendant in the lower court, while the Respondent was the plaintiff. In a plaint dated 6th January, 2006 the Plaintiff sought judgment against the Defendant for a sum of Ksh.81,613/75 being the unpaid balance sum of the agreed and/or reasonable price of building stones sold and delivered to the Defendant at its request in the year 2002.

The Defendant thereafter filed a defence denying that it owed the plaintiff the sum claimed or that it ever ordered for the stones from the Plaintiff for which it failed to pay as claimed.

By and under an application by Notice of Motion dated 10th November, 2006, the Plaintiff promptly sought a summary judgment under Order 35 Rule 1 and Order L Rule 1 of the Civil Procedure Rules (equivalent of our Order 36 and 51 currently). It deposed facts in support of the pleadings contained in the plaint. In particular the plaintiff annexed the invoices and signed delivery notes and statements related to the transaction which was the subject of the claim. It further swore that the transaction indeed took place when it supplied the building stones and received from the Defendant part payment for stones delivered. The suit was seeking to recover the balance. It also annexed a copy of the demand letter which its advocates later sent to the Defendant and which letter was allegedly properly delivered and received. The Plaintiff finally deposed that the Defendant's denial of the transaction and the sum claimed, in the Defence, was a mere and bare denial and required being struck out and a summary judgment be entered in its favour.

The Defendant did not file any affidavit to counteract the Plaintiff's sworn facts but instead filed a Statement of Grounds of Opposition signed by its counsel. The same stated that the documents annexed in support of the application for summary judgment failed to include any orders made by Defendant for the alleged building stones and failed to show any document showing any receipt or acknowledgement of the alleged building stones.

The application was eventually heard and was granted by the Resident magistrate in a Ruling dated 24th May, 2007. That is what triggered this appeal.

The major complaint by the Appellant in the grounds of appeal can be summarized into one ground;

that the trial court erred in not finding that there were triable issues in its defences and therefore, erred in failing to grant the appellant an unconditional leave to defend the suit.

I have carefully considered the grounds of appeal after perusing the pleadings, the application before the trial court and the material filed in support and in opposition to the application. As annexures to the application the Respondent/applicant had included the relevant invoices, delivery notes duly signed purportedly by the Appellant/Defendant and the statement documents relating to the transaction, all in support of the amount claimed. The affidavit in support of the application had explained the facts concerning the transaction.

It is not denied by the appellant that it was served with all those documents. Thereafter, it would be logical, indeed, necessary to see the Appellant/Defendant, who was allegedly stranger to the transaction, react by immediately filing a statement of acceptable and credible facts, denying the claim. The same would be contained in an affidavit properly sworn and probably stating the way it happened or never happened and therein raising facts which would raise triable issues, as alternative to those sworn by the Applicants.

The above is not what the Appellant/Defendant did, however. Instead, it filed a statement of Grounds of Opposition which alleged some unsworn facts or allegations which did not, indeed, could not effectively challenge sworn depositions in support of the application. The grounds of opposition did not also challenge the facts deposed in the Supporting Affidavit. They did not for example state that the delivery notes which on their face were properly signed by the person receiving the material, were forgeries. These left the sworn facts in the Supporting Affidavit unchallenged and therefore credible and acceptable as the correct state of facts of the pleaded transaction.

The trial court considered the above situation. It then stated:-

“In opposing the application the Defendant filed Grounds of Opposition. Grounds 1 & 2 disputes delivery and receipt of the alleged goods supplied to the Defendant. These are not points of law but fact. Delivery notes and invoices have been exhibited. They are signed (delivery notes). There is no allegation that the signatures appended to the delivery notes to acknowledge receipt of the stated goods are forgeries. The Defendant did not challenge the facts raised in relation to the transaction by way of replying affidavit. The said facts remain uncontroverted – the Defendant has not denied the Plaintiff’s claim on oath.”

Clearly, therefore, the trial court saw no alternative facts from the defendant, to those sworn by the Plaintiff in support of the application for summary judgment. If any existed in the Grounds of Opposition, they were not credible to the trial court since they were not on oath. The trial court in these circumstances saw an undoubtable and clear claim by the Plaintiff as compared to the Defendant’s sham and/or spurious defence. It proceeded to enter a summary judgment.

As stated in Magunga General Stores –vs- Pepco Distributors Limited (1985-1992) 2 KAR 89

“...Dealing with that aspect of the matter before him, the learned justice of appeal said in page 91; first of all a mere denial is not sufficient defence in this type of cases. There must be some reason why the Defendant does not owe the money. Either there was no contract or it was not carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient therefore to simply deny liability without some reason.”

In my considered view the trial court was entitled to enter the summary judgment that it did. In the administration of justice the court is empowered, in appropriate suits, to enter judgment for the claim of the Plaintiff under summary procedure where the defence filed in a mere denial without more. The above was such suitable suit.

In the circumstances this court finds no reasonable ground to interfere with the trial court’s judgment. It, therefore, finds no merit in this appeal and hereby dismisses it with costs. Orders

accordingly.

DATED and DELIVERED at Nairobi this 9th day of October, 2012

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D.A. ONYANCHA
JUDGE