



REPUBLIC OF KENYA

High Court, at Nairobi

Civil Application No 1065 of 1985

Gateway Insurance Company Ltd

v

Uchumi Insurance Brokers Ltd

October 24, 1985, O’Kubasu J delivered the following

Ruling.

This is a chamber summons application in which the plaintiff is seeking the following orders:

“(a) That the defence filed herein by the defendant be struck out as it is frivolous and vexatious and/or it may prejudice, embarrass or delay the fair trial of this action and/or it discloses no reasonable defence and is otherwise an abuse of the process of court.

(b) That judgment be entered against the defendant for Kshs 319,496, plus costs on the original sum claimed in the plaint and interest thereon.

(c) That costs of this application be provided for.”

This chamber summons is said to have been brought under order VI (a), (b), (c) and (d) of the Civil Rules and section 3A of the Civil Procedure Act. I am sure the advocates for the plaintiff meant order VI rule 13(1) (a), (b), (c) and (d) of the Civil Procedure Act and section 3A of the Civil Procedure Act. This application is supported by the sworn affidavit of Christom W. Kinyua in which he (Kinyua) deposes:

“1 That I am an underwriting manager with the plaintiff company and have authority to swear this affidavit on its behalf

2 That the plaintiff claims from the defendant Kshs 319,496

3 That I honestly believe that the defence filed herein is intended to delay the trial of this Action as the defendant does not have a defence at all. Annexed hereto and marked “cwkl” is a copy of a letter written by the defendant’s advocates to the plaintiff’s advocates impliedly admitting the plaintiff’s claim expressly stipulating that the defendant is willing to settle the claim by monthly instalments of not more than Kshs 40,000.

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4 That after the filing of this suit the plaintiff has given the defendant credits for commissions and payments made and the balance to date in the sum of Kshs 319,496. Annexed hereto and

marked "cwk 4a" is a copy of the up to date statement of accounts

. 5 That the defendant now truly owes the plaintiff the sum of Kshs 391,496 of which I does not have a defence.

6 That the defendant under the agency contract is not obliged to pay any claims on behalf of the plaintiff and all the defendant is obliged to do is pay the premium less commission to plaintiffs

7 That I honestly believe that all what the defendant is doing is trying to buy time by protracting this proceeding and in the meantime praying to be allowed to pay by instalments. Annexed hereto and marked "cwk 2" is another letter from the defendant's advocates praying that the defendant be allowed to liquidate the amount owing by instalments.

8 That the defendant has been supplied with an up to date statement of the amount due and owing and the defendant does not deny being indebted to the plaintiff except allege it has settled claims for the plaintiff. Annexed hereto and marked 'cwk 3"and "cwk 4" is a copy of letter from the defendant's advocates and the statement of accounts which was duly supplied to defendant vide copy of letter marked "cwk 5".

9 That I make this affidavit in support of the plaintiff's application that the defence filed herein be struck out and judgment be entered for Kshs 319,496 plus costs and interest.

10 That what is deponed to herein is true to the best of my knowledge information and belief."

The plaintiff Gateway Insurance Company Limited filed this suit against the defendant Uchumi Insurance Brokers Company Limited claiming the sum of Kshs 452,380, being the amount due and payable by the defendant to the plaintiff in respect of insurance premiums received by the defendant on behalf of the plaintiff for insurance covers sold by the defendant on behalf of the plaintiff, less the defendant's commission. The relevant paragraphs of the defence filed are as follows:

" 4 The defendant denies that it owes the plaintiff the sum of Kshs 452,380 as alleged paragraphs 4 and 5 of the plaint. 5 Without prejudice to the foregoing, the defendant admits owing

Certain amounts to the plaintiff which is much less than the amount claimed in the plaint. The actual amount thereof is unknown to the defendant.

6 In pursuance of the contents of paragraph 5 above, the defendant requests the plaintiff to supply to the defendant an up to date statement of accounts showing the actual amount due by the defendant to the plaintiff as at April 30,1985 settlement, 'by the' defendant"

The defence was filed in this court on May 14, 1985. In a letter dated July 12, 1985 the advocate for the defendant wrote to the plaintiff's advocates as follows:

"We refer to past correspondence on this matter. Our clients have informed us that they have paid claims on behalf of your client of a further Kshs 69,216 as at today's date.

Accordingly, this figure must be deducted from the figure of Kshs 391,342 which was mentioned in your letter to us dated June 25, 1985. This leaves a balance of Kshs 322,126 outstanding as at July 12, 1985.

Our client is willing to pay this amount by monthly instalments of Kshs 40,000. However, your client must confirm that it will immediately start settling claims arising out of the insurance business introduced to your client by our client. At the moment, our client has been settling these claims direct on behalf of your client."

We note here that as at July 12, 1985 the defendant was admitting that it owed the plaintiff a sum of Kshs 322,126. The defendant was requesting that this debt be liquidated by monthly instalment of Kshs 40,000. And in this application before me the plaintiff is now asking for Kshs 319,496. To support this figure is the statement of accounts marked "cwk 4" annexed to this application. The original amount claimed by the plaintiff was Kshs 452,380. This figure has now been reduced to Kshs 319,496 according to the up to date statement of account ("cwk4"). The defendant has asked for this up to date statement of accounts and this was supplied. The defendant has not so far disputed this sum of money. Indeed there is no notice to object as per order L rule 16 of the Civil Procedure Rules.

Can it be said that there is a valid defence to this suit? The defendant admitted that he owed the plaintiff some money and requested for particulars. These particulars were supplied in form of an upto date statement of account. This has not been disputed. The defendant requested that payment be made by way of monthly instalments but that request was not accepted. What then is the defendant's defence? None at all.

I am fully aware of the fact that summary judgement is a drastic remedy as was said by Madan JA (as he was then) in Civil Appeal No 5 of 1982 but where there is clearly no defence a plaintiff is entitled to his remedy. The following words by Lord Halsbury in Jacobs v Booths Distillery Company 85 LT 262 are worth noting:

"There are some things too plain for arguments, and where there were pleas put in simply for the purpose of delay, which only added to this expense, and where it was not in aid of justice that such things should continue order XIV was intended to put an end to that state of things and to prevent defences from defeating the rights of parties by delay and at the same time causing great loss to plaintiff's who are endeavouring to enforce their rights".

Having considered the defence filed herein and the sworn affidavit of Mr Kinyua in support of this application together with the annexed documents thereof I am satisfied that there is no valid defence to the plaintiff's claim. The defence filed is merely intended to cause a delay and defeat the rights of the plaintiff. I therefore order that the defence filed herein be struck out and I enter judgment in favour of the plaintiff the sum of Kshs 319,496, plus costs on the original sum claimed in the plaint and interest thereon. The plaintiff is also awarded the costs of this application. Order accordingly.

October 24, 1985

O'Kubasu J