



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CAUSE NO. 2644 OF 1982

MABATI LIMITED.....APPLICANT

VERSUS

VG PATEL & SONS LTD..... RESPONDENT

RULING

This is an application for orders that the defendant serve on the plaintiff particulars of paragraphs 3 and 4 of the defence. The application is brought under order VI rule 8(2) of the Civil Procedure Rules. Mrs Shiani for the plaintiff/applicant argues that if the particulars are not given, then the plaintiff will be taken by surprise at the time of the trial. She relies on the case of *Kashibai v Sempagama* [1967] EA 16, a decision by Bennett J in the High Court of Uganda.

Mr Muthoga for the defendant argues that if these are not matters that particulars must be ordered as they are not in any way capable of embarrassing the plaintiff.

In this case, the plaintiff filed this suit against the defendant claiming Kshs 69,238.90 being the balance of the amount due from the defendant to the plaintiff in respect of goods sold and delivered to the defendant in 1981. According to the plaint filed, the plaintiff's claim is as follows:

“The plaintiff's claim against the defendant is for the recovery of the sum of Kshs 69,238.90 being the balance of the amount due from the defendant to the plaintiff in respect of the goods sold and delivered to the defendant at the defendant's request and its behalf during the year 1981, prices whereof were agreed and/or reasonable prices particulars whereof are known and supplied to the defendant.”

A defence was then filed which states, *inter alia*:

“2. The defendant denies being indebted to the plaintiff the sum of Kshs 69,238.90 or any or any sum or sums or at all and puts the plaintiff to strict proof, thereof.

3. The defendant avers that the plaintiff's suit is bad in that the same is incompetent and misconceived, frivolous and vexatious and is an abuse of the due process of the court merely meant to embarrass and/or scandalise the defendant unreasonably and should be struck out from record.

4. The defendant further avers that the plaintiff's suit is bad in that the same does not disclose any or any reasonable cause of action against it and is unreasonable and unmaintainable and should be struck out from record.”

Particulars are being asked for in respect of paragraphs 3 and 4 of the defence as set above.

Looking at the pleadings before the court there can be no dispute that the plaintiff's claim against the defendant is in respect of Kshs 69,238.90 as the balance of the amount due from the defendant to the plaintiff in respect of goods sold and delivered to the defendant at the defendant's request in the year 1981. The defendant denies this and puts the plaintiff to strict proof. Hence, the issue is and will be whether the plaintiff is entitled to this sum of Kshs 69,238.90. The plaintiff has to prove its case on balance of probabilities.

In the case of *Kashibai v Sempagama* [1967] EA 16 the defence contained a plea

"The plaint is bad in law and does not disclose any cause of action ..."

It would appear that in the above defence there was no specific denial but the contention that the plaint was bad in law and that it did not disclose any cause of action. Surely, if a plaintiff is faced with such a defence, an order for further particulars would be sought. That is not the position in this case. Here, the defendant has specifically denied the plaintiff's claim for Kshs 69,238.90 or any other amount. Then the plaintiff went on to state that the defence was bad (not in law) and that it was incompetent, misconceived, frivolous, vexatious and an abuse of the due process of the court and merely intended to embarrass and/or scandalise the defendant unreasonably.

In my view paragraph 3 and 4 are unnecessary additions to the main defence which is a denial of indebtedness in the sum claimed or any other sum. The defence should have stopped at paragraph 2. There is a practice in this country in which defence is filed and instead of denying the claim concisely, the defence is loaded with all sorts of irrelevant paragraphs as if the court will judge the defence by its length and the number of paragraphs. This practice of adding unnecessary paragraphs to the main defence should be discouraged. And this is what we have in the filed defence in this case - if I may be allowed to say so, I have seen a defence of twenty four paragraphs when the relevant defence was in only two of the paragraphs the rest being all sorts of unnecessary allegations. Having considered the pleadings before the court and in view of the concise statement of the plaintiff's claim and the defence filed herein in which the claim is denied in total, I am of the view that the other paragraphs of the defence were indeed unnecessary and a perpetuation of undesirable practice. In my view, no particulars need be ordered in view of the fact that these are allegations which are unnecessary. I therefore refuse to order for further particulars. I feel even more fortified in my conclusion by what Law Ag P said in *Mahida v Khetani* [1975] EA 306 at p 307:

"The appellant's claim is for repayment of a sum of money, allegedly lent to the respondent. Paragraph 2 of the respondent's defence is in the usual form, a denial of indebtedness in the sum claimed or any other sum.

The defence should have stopped there. Instead, a completely immaterial and superfluous paragraph follows, beginning with the meaningless words - that is to say, meaningless in a pleading - 'entirety without prejudice ...'

This paragraph in my opinion, is no more than a gratuitously volunteered indication supplied by the respondent of the evidence upon which he proposes to rely in support of his defence that he is not indebted to the appellant in the sum claimed or in any other sum.

This is not a matter of which a court should order particulars to be given, and I consider that the judge was right to refuse the order applied for by the appellant."

In view of the foregoing I am satisfied that the application by the plaintiff for particulars to be provided has no merits. The application is therefore dismissed with costs. Order accordingly.

Dated and Delivered at Nairobi this 27th Day of June, 1983

E.O. O’KUBASU

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JUDGE