

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0743-2005

Kampala Pharmaceutical Industries Ltd
PLAINTIFF

VERSUS

Safeway Pharmacy Ltd
DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff brings this action to recover from the defendant special and general damages, interest and costs of this suit. It is contended for the plaintiff that the defendant sought and was supplied by the plaintiff with various items and quantities of drugs/medicines from 5th September 2000 to 22nd January 2001. The defendant made part payment leaving a balance of Shs.26,927,000.00 as at 27th March 2001. In spite of several demands by the plaintiff, the defendant failed and or refused to pay the said sum of money.
2. The defendant was served with summons but failed to file a defence. The plaintiff applied for interlocutory judgment and the setting down the suit for formal proof. The application did not cite any law under which this matter should be handled. The Registrar obliged and entered on 14th February 2007 and set down the suit for formal proof. At the hearing for formal proof the plaintiff called one witness and closed its case.
3. It is clear to me that much as in the plaint in this case the claim for Shs.26,927,000.00 was referred to as a claim for ‘special damages’, this was no

claim for special damages as such. It is simply a claim for a debt unpaid, which in substance is a liquidated demand. This claim is not a claim for pecuniary damages. Coupling it with a claim for general damages and then seeking an interlocutory judgment, which I presume was intended to be under Order 9 Rule 8 of the Civil Procedure Rules, was an error, as only claims for pecuniary damages only can fall under that rule.

4. In this regard, reference is made to an earlier decision of this court, in *Dembe Trading Enterprises Ltd v Uganda Confidential Ltd and Anor, HCT-00-CC-CS-0612-2006 (unreported)*, in which it is noted,

‘Order 9 Rule 8 applies, to ‘a *plaint drawn with a claim for pecuniary damages only*’ or a claim for the detention of goods which is not the case before me. There is a claim for pecuniary damages in this case, but it is not the only claim in the plaint. There are several other claims for liquidated amounts for which Order 9 rule 6 grants the court discretion to enter judgment in case the defendant did not file a defence.

The rules do not provide specifically for cases where there is a conjunction of claims for both liquidated demand and pecuniary damages and the defendant does not file a defence. Is it possible to apply both rules 6 and 8 conjunctively? That is to disaggregate the claims in the plaint, and apply rule 6 to those claims to which it applies, and apply rule 8, to that part of the claim to which rule 8 may presumably apply. This may not be possible given the wording of rule 8, which refers to ‘a *plaint drawn with a claim for pecuniary damages only*’. Rule 8 appears to be restricted in application to plaints in which there is a claim for pecuniary damages only or for the detention of goods. If the plaint in question has other claims or has other claims coupled with these claims, it cannot fall within the operation of rule 8, which is restricted to a plaint a claim for pecuniary damages only, in the context of this suit.’

5. The entering of an interlocutory judgment in this case was an error, given the joinder of a liquidated claim, even though it was ‘christened’ ‘special damages’ with one for pecuniary damages. Much as a hearing proceeded on such a judgment, such a hearing was in error in too. I accordingly set aside both the interlocutory judgment, and the hearing for formal proof that proceeded upon it.
6. As there was proof of service, and the defendant did not file a defence, I will enter judgment for the plaintiff, under Order 9 Rule

6 of the Civil Procedure Rules, for the liquidated demand of Shs.26,927,000.00 with interest at 8% per annum from 24th April 2005 to the date of judgment, and thereafter at court rate till payment in full and costs of this suit.

Dated, signed and delivered at Kampala this 28th day of June 2007

FMS Egonda-Ntende
Judge