THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT-00-CC-CS-0638-2005

MOTORCARE (U) LTD :::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ATTORNEY GENERAL :::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

R U L I N G:

The plaintiff's claim against the defendant is for the recovery of a debt amounting to Shs.65, 856,467.99= being alleged balance of the outstanding principal sum. The plaintiff alleges in its plaint that by way of local purchase orders dated 14th June, 2004 and 8th September 2004, the defendant ordered for 2 Nissan Patrol Station Wagons from the plaintiff at a cost of Shs.233,385,032=. That the plaintiff duly complied with the defendant's order and hastily delivered the said motor vehicles. That the due date for payment of the motor vehicles was the date of invoicing the defendant. It is the plaintiff's case that despite being invoiced for the payments, the defendant has only paid part of the contractual amount, and to date an amount of Shs.65,858,467= remains outstanding. Hence the suit. When the case came up for a scheduling conference on 15/5/2006, Mr. Bernard Mutyaba appeared for the plaintiff and Fatuma Nanziri for the defendant. Both counsel agreed that the following would not be disputed:

1. That the plaintiff upon the defendant's order supplied 2 Nissan Patrol Station Wagons at a total cost of Shs.233,385,032=. Payment was to be made upon the plaintiff invoicing the defendant.
2. That upon being invoiced, the defendant paid Shs.167, 526,565= to the plaintiff leaving a balance of Shs.46, 685,032=.

3. That the plaintiff on several occasions vide a number of correspondences reminded the defendant of its obligation to make good the payment of the outstanding amount. All such requests were dishonoured.
4. That on 14/9/2005 (sic), the balance on the purchase price of Shs.46, 685,032= was paid.
5. The suit was filed on 26/9/2005.

Accordingly, only one issue was agreed upon:
Whether notwithstanding the fact that the defendant paid the entire purchase price before the suit was filed it is liable to pay interest on it.

The case was then adjourned to explore a possibility of an amicable settlement which failed. When the hearing resumed, Mr. Karemera appeared for the defendant and raised a preliminary objection. He argued that according to the plaint, the plaintiff's prayers do not in anyway reflect the issue now in contention. According to counsel, the interest being prayed for is on the sum that had already been paid prior to the institution of the suit. That in para 3 (c) of the plaint, the plaintiff's case is that the defendant has only paid part of the contractual amount and to-date an outstanding balance of Shs.65,858,467= remains outstanding. Counsel specifically referred me to 0.7 r. 7 of the Civil Procedure Rules which states that every plaint shall state specifically the relief which the plaintiff claims, either simply or in the alternative. He also referred me **to Bullen & Leake & Jacob's Precedents of Pleadings, 13th Edn**, where the learned authors state that a claim for interest must be specifically pleaded. That if it is not pleaded, the Court will not award the plaintiff any interest. He therefore invited me to dismiss the suit with costs.

Mr. Mutyaba does not agree. He argues in his written submissions that the plaintiff has a sustainable claim against the defendant. He argues in the alternative that any deficiency in the plaintiff's pleadings is curable by amendment.

I have carefully addressed my mind to the able arguments of both counsel. It is trite that the object of pleadings is to bring the parties to a clear issue and delimit the same so that both parties know before hand the real issue for determination at the trial: ***Kahwa & Anor –Vs- UTC [1978] HCB 318.***

In the instant case, it is an admitted fact that the balance on the purchase price was paid to the plaintiff. This payment, whether on 14/9/2005 or 19/9/2005, was effected before the plaintiff filed this suit on 26/9/2005. The issue is whether notwithstanding the said payment the defendant is liable to pay

interest on the settled amount. In my view, whether or not the defendant is liable to pay depends on whether or not the plaint shows a cause of action against the defendant.

Harlsbury's Laws of England, 4th Edn (Re-issue) Vol. 37 at p. 24 explains a cause of action thus:

> ***"Cause of action. 'Cause of action has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from the earliest time to include every fact which is material to be proved to entitle the claimant to succeed, and every fact which the defendant would have a right to traverse. 'Cause of action' has also been taken to mean the particular act on the part of the defendant which gives the claimant his cause of complaint, or the subject matter or grievance founding the claim, not merely the technical cause of action."***

It is such an important aspect of our law that 0.6 r. 1 (a) requires all pleadings, generally, to contain a brief statement of the material facts on which the party pleading relies for a claim or defence. Under 0.7 r. 1 (e), the plaint must contain the facts constituting the cause of action and when it arose. The consequences of non-compliance are grave. They are set out in 0.7 r. 11.

It is in my view settled law that the question whether or not a plaint discloses a cause of action must be determined upon perusal of the plaint alone, together with anything attached as to form part of it: ***Jeraj Shariff & Co. –Vs- Chotai Fancy Stores [1960] EA 374 at 375.***

I have studied the plaintiff's pleadings. In paragraph 3, it is stated that the plaintiff's claim is for the recovery of a debt amounting to Shs.65, 856,467.99= being the balance on the outstanding principal sum on account which arose in the manner detailed there under. When the plaint is read as a whole, one gets the message that the plaintiff duly supplied two motor vehicles to the defendant on order. That despite the said delivery, the defendant has only paid part of the contractual amount and to date a sum of Shs.65, 856,467= remains owing. I note that there is a discrepancy between the amount stated in the opening paragraph (i.e Shs.65, 856,467.99=) and that stated else where (i.e. Shs.65, 858,467). The discrepancy can be sorted out at the hearing or by amendment.

I notice that Shs.65, 858,467= is claimed as special damages although the amount is not particularized. The plaintiff then prays for interest on the principal sum at 36% p.a from the date of judgment till payment in full. From the records, the Shs.65, 858,467= includes interest on the principal sum from

the date of the accrual of the debt till filing. This much is not started in the plaint. Mr. Karemera appears to argue that the failure to state so in the plaint is fatal to the plaintiff's claim. I'm unable to accept that view given what I stated herein above that a cause of action must be determined upon perusal of the plaint together with anything attached to form part of it.

In the instant case, the attachments include a notice to the intended defendant which shows in para (v) thereof that the outstanding balance of Shs.65, 856,467.99= is inclusive of the principal debt, interest thereon and administration fees. As I said earlier on, these are the missing particulars in the plaint.

Mr. Mutyaba is of the view that the omissions are curable by amendment under 0.6 r. 19 of the Civil Procedure Rules. Mr. Karemera for the defendant does not agree. This calls for Court's interpretation of 0.6 rr. 19 and 31 of the Civil Procedure Rules.

In the rejoinder, Mr. Karemera has submitted that the amendment could not be brought orally; that it should have been brought under Rule 31 by Chamber Summons. This kind of argument was long rejected as far back as 1961 in ***D.D Bawa –Vs- G.S. Didar Singh [1961] EA 282*** when the Court observed at p. 283:

> ***"He submits that I could not allow an amendment to be made in the course of the hearings and that it would be necessary for the hearing to be adjourned in order that an application be made by the plaintiff by summons in chambers for leave to amend the plaint. If this view of the law is correct, it produces a highly inconvenient result attended with unnecessary delay. But I am satisfied it is not a correct view. Order 48 of the Civil Procedure Rules deals with motions and other applications, and Rule 1 is as follows:-***
> ***All applications to the Court, save where otherwise expressly provided for under these rules, shall be by motion and shall be heard in open Court'***.
>
> ***Rule 30 of order 6 is clearly one of the exceptions to this general provision. I think its purpose is not to preclude the Court from dealing with an oral application to amend pleadings in the course of a hearing, but to provide that if an interlocutory application is made under Order 6 rule 18, it shall be by the proceedings of summons in chambers and not by notice of motion. Otherwise the words 'at any stage of the proceedings' in rule 18 would hardly be consistent with rule 30. And there is a further point made by Mr.***

Singh-which I think is a good point – that the interpretation contended for by Mr. Dalal would be inconsistent with the provisions of section 103 of the Civil Procedure Ordinance …….. Section 103 is as follows:-

"103 ……"

It is noteworthy that 0.6 r. 18 cited above is the equivalent of our current 0.6 r. 19; rule 30 equivalent of our 31; and S. 103 equivalent of our S.100 of the Civil Procedure Act. So Mr. Karemera's objection that the application to amend was not brought by Chamber Summons pursuant to 0.6 r. 31, and cannot, therefore, be brought orally is not any more a valid objection. See also: ***Edward Seninde –Vs- Fred Luwaga HCCS No. 544/93*** reproduced in ***[1995] IV KARL 149*** at 156.

I would respectively follow the position as stated in D.D. Bawa, supra, and over rule the objection.

It is also argued by learned counsel for the defendant that the plaint ought to be struck out and suit dismissed with costs to the defendant and no amendment (basing on an application by way of written submissions) is allowed at this stage. He bases his argument on ***Gaso Transport Service Ltd –Vs- Martin Adale Obene SCCA No. 4 of 1994*** where some principles were laid down. I have not had the benefit of reading that authority in full. But while interpreting rule 19 (formerly 18) of Order 6 our Courts have over the years held, inter alia, that:

1. An amendment ought to be allowed if thereby the real substantial question can be realized between the parties and a multiplicity of proceedings avoided. This rule, I must say, has no time limit, subject to only one condition that the application to amend is brought anytime during the course of the proceedings.
2. Amendment sought before hearing should be freely allowed, if they can be without injustice to the opposite side.
3. Applications for leave to amend the plaint should be refused so far as the amendment would introduce a new cause of action.
4. Leave to amend will be refused where a plaintiff seeks to add a new cause of action, which is inconsistent with his pleadings and his evidence.
5. An oral application to amend during the trial may be allowed.
6. Finally, and most importantly, an amendment may be allowed at a very late stage, where is it is necessitated solely by a drafting error and there is no element of surprise. See: ***Edward Seninde,*** supra.

In view of the above authorities, I would over rule Mr. Karemera's objections based on late application to amend. I do so because from the pleadings, the plaint is dated 21/9/2005. It was filed in Court on 26/9/2005. From the records, the balance on the principal sum of Shs.46, 685,032= was paid on 19/9/2005, 2 days before the plaint was drafted, and about a week to the filing of the suit. I would attribute the plaintiff's failure to take into account this late payment to drafting error.

From the records also, the plaintiff raised the issue of interest on the principal sum long before the suit was filed. However, the defendant ignored it and paid only the balance on the purchase price. I don't find any element of surprise in the issue of interest because from the order documents the plaintiff was categorical that "in case of late payment an interest of 3% per month" would be charged. The defendant knows very well that this is the claim the plaintiff is pursuing after getting the full purchase price. Section 26 (2) of the Civil Procedure Act gives the Court a discretion as to when the interest awarded should commence. The plaintiff's claim relates to the period prior to the institution of the suit. I agree with the view expressed by learned counsel for the plaintiff that the anomaly cited by his colleague is not fatal to the plaintiff's claim. It is curable by way of an amendment of the pleading in accordance with 0.6 r. 19 of the Civil Procedure Rules. I would consider this not only to be just in the circumstances of this case but also crucial for the Court to determine the real questions in controversy between the parties.

For the reason I have endeavoured to give above, I find that the plaintiff's plaint discloses a sufficient cause of action against the defendant. Any omission or defect may be put right by amendment.

I would therefore disallow the preliminary objection, order the intended amendment effected within seven (7) days from the date of this order and direct that the issue of interest be sufficiently pleaded and set down for hearing and determination on merits. Costs shall abide the outcome of the suit.

I so order.

Yorokamu Bamwine
J U D G E
27/7/2007

Order: This ruling shall be delivered by the Registrar of this Court on my behalf on the due date.

Yorokamu Bamwine

J U D G E

27/07/2007