

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

**CIVIL SUIT NO 593 OF 2012**

**ENGINEERING TRADELINKS CO. LTD ..... PLAINTIFF**

**VERSUS**

**DFCU BANK LIMITED ..... DEFENDANT**

**BEFORE: LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

This long standing case was called for hearing on 29.01.15. Both parties were represented by their lawyers and representatives from their Companies.

Counsel for Plaintiff informed court that he was ready to proceed and had two witnesses in court.

It was at this point that Counsel for the Defendant raised a preliminary objection. Although court tried to persuade him to frame the objections as issues to be handled in the suit, he was adamant that the objections were points of law and would dispose of the whole suit.

- Referring to paragraph 4 of the written statement of defence and counter claim of the Defenant, Counsel stated that the pleadings of the Plaintiff do not in any way disclose a cause of action. That the matter related to an over draught obtained by the Plaintiff from the Defendant Bank and the over draft is regulated by a contract entered into freely between the two parties. And that the overdraft provides in detail how the same will be governed.

That looking at the plaint and the summary of evidence there is nothing to indicate how the co-ntract was breached. – He cited the case of **Tororo Cement Co. vs. Fatina International SC CA 02/01** where the court set out the three elements which have to be indicated for a Plaint to disclose a cause of action.

Counsel went through the three elements and asserted that the Plaintiff in the present case does not show how the Defendant violated the right of the Plaintiff following the contractual obligation.

He then prayed court to strike out the plaint contending that case law is to the effect that ***“where a plaint does not disclose a cause of action it should be struck out”***.

Two other issues were also raised to wit:

That the witness statements of Mr. Osuna and Mr. Okongo especially the paragraphs relating to the sale of the property were for trial before another court and ought to be expunged from the statements.

And that the third witness statement of Mr. Ochieng said to be an expert witness cannot be produced without leave of court which had not yet been obtained and should also be expunged from the record, if court was inclined to proceed with the trial.

Counsel for the Plaintiff submitted in reply that the objection was only meant to delay trial as the plaint discloses a cause of action. That while it is not disputed that the Plaintiff borrowed money, the interest charged by the Defendant and the outstanding balance were in dispute.

The Plaintiff, Counsel stated, is aggrieved that more is being demanded than what is due to the Defendant and that, that is a violation of the Plaintiff’s right.

And that while the objection was to be raised, it was overtaken by the consent of the parties of 08.11.13, when it was agreed that Plaintiff deposits an amount of money in court and be heard on the balance.

The parties agreed that there are triable issues and that the matter would be heard before court.

Accordingly, Counsel contended that the objection was uncalled for and ought to be overruled and the matter heard as parties had agreed.

As to the two witness statements that Counsel for the Defendant would have an opportunity to cross examine the witnesses.

In respect of the expert witness, that it was on record that during the scheduling, court had granted leave to call the expert witness.

Counsel for the Defendant reiterated earlier prayers and submissions, adding that the consent related to a different matter. And that since the Plaintiff admits owing the Defendant, judgment should be entered on admission and trial proceeds on the interest due.

It was also pointed out that the joint scheduling memo has four agreed issues and none of the issues includes the alleged sale of the property and all remedies sought are in the plaint.

Upon giving the submissions of both Counsel the best consideration, I can in the circumstances, I find that am more persuaded by the submissions of Counsel for the Plaintiff.

It is on record that on the 08.11.13, the parties agreed that the Plaintiff deposit shs. 217,796,294/- being the admitted sum, initially in settlement of the obligation of the Defendant.

And that the disputed figure over and above the amount mentioned above **shall** be subjected for trial by court or as may

further be agreed between the parties to ascertain the amount owing due if any.

The agreement was filed on 12.11.13.

It is surprising that after that consent, Counsel for the Defendants turns around to raise the objection; which is tantamount to renegeing on the consent order.

As regards the witnesses statements which Counsel for the Defendant wants paragraphs thereof expunged, I would agree with Counsel for the Plaintiff, that to do that now, would be putting the cart before the horse. Counsel for the Defendant will have an opportunity to cross examine the witnesses on those statements and if court finds the evidence irrelevant, it will deal with it according to the law.

In respect of the expert witness, it can be discerned from the record that on 23.10.14, when scheduling was done, indeed Counsel for the Plaintiff brought it to the notice of court that the expert witness would be called.

Court gave leave and time for trial was fixed. Parties were required to file witness statements and timelines were fixed by court within which the exchange would be made. Hearing was then fixed for 17<sup>th</sup> and 18<sup>th</sup> .11.14.

The witness statement is properly on record and will not be expunged as prayed by Counsel for the Defendant.

The preliminary objections are overruled for all those reasons with costs for the day granted to the Plaintiff.

I wish to observe that, it would appear that Counsel for the Defendants were not ready to proceed and instead of applying for adjournment, decided to raise the objections instead.

Court takes exception to the waste of time occasioned by the raising of useless preliminary objections. Counsel are advised to desist from such behavior in the future.

**FLAVIA SENOGA ANGLIN**  
**JUDGE**  
**30.01.14**