

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**MISCELLANEOUS APPLICATION NO. 755 OF 2023**  
**[ARISING FROM CIVIL SUIT NO. 221 OF 2023]**

**TURKISH AIRLINES INC. ] APPLICANT**

**VERSUS**

**1. KK FRESH PRODUCE EXPORTERS LIMITED ]**  
**2. JAMES KANYIJE ] RESPONDENTS**  
**3. DR. DATTATREY NAGIREDDY ]**

**Before: Hon. Justice Thomas Ocaya O.R**

**RULING**

**Background**

The Applicant brought this application under the provisions of Section 98 of the Civil Procedure Act ["CPA"], Section 33 of the Judicature Act and Orders 9 Rules 6,10, 11(2) and 52 Rules 1, 2 and 3 of the Civil Procedure Rules ("CPR"). The application seeks the following reliefs;

(a) The written statement of defence filed by the Respondents on 30<sup>th</sup> March 2023 in Civil Suit 0221 of 2023 be struck out for offending the provisions of the Civil Procedure Rules.

(b) The Respondents' Written Statement of Defence filed in Civil Suit 0221 of 2023 is a sham, frivolous, vexatious and an abuse of court process.

(c) Judgment be entered against the plaintiffs on such terms as prayed in the plaint.

(d) Costs of this application be granted to the Applicant.



5 The Applicant commenced Civil Suit 221 of 2023 in this court against the Applicant and the same is pending determination [hereinafter “the main suit”]. To put the applicant’s story concisely, it contends that it extended freight services to the 1<sup>st</sup> Respondent during the year 2021 until 2022. The Applicant did not pay for those services, but had issued a bank guarantee which operated as a security in the event  
10 of non-payment. When the 1<sup>st</sup> Respondent failed to pay for the services rendered, the Applicant took steps to liquidate the bank guarantee, only to find that the same was not unconditional as had been represented, but was instead conditional on the consent of the 3<sup>rd</sup> Respondent which was not given.

15 The Applicant thus commenced the main suit seeking to recover USD 604,879 being sums outstanding under the contract between the Applicant and the 1<sup>st</sup> Respondent, contractual interest and special damages.

The Respondents filed a defence, which the Applicant contends is a sham, consists  
20 of general denials, is evasive, frivolous, vexatious and an abuse of court process, hence this application to strike out the same.

### **Representation**

The Applicant was represented by M/s Katende Ssempebwa & Company  
25 Advocates while the Respondent was represented by M/s JOSKA Advocates.

### **Evidence and Submissions**

The Applicant led evidence by way of an affidavit deposed by Sevket Bakkal, the Applicant’s Regional Cargo Manager. The Respondents led evidence by way of an  
30 affidavit in reply deposed by the 2<sup>nd</sup> Respondent.

Both parties made submissions in support of their respective cases, including submissions in rejoinder by the Applicants. I have considered all the submissions of the parties before coming to the ruling below, suffice to say that I have not felt  
35 the need to reiterate the same below.



5 **Decision**

The Applicants, in their application, made the following major averments which underpin their application;

(a) The Respondents' defence in the main suit offends the provisions of the CPR and should accordingly be struck out.

10 (b) The Respondents' defence in the main suit is a sham, frivolous, vexatious and an abuse of court process.

We shall consider each of the above averments in the order presented in order to determine this application.

15

Defence Offends CPR

Under this head, the Applicant contends that the Respondents' defence is evasive and consists of general denials. [See Para 10-14 of the Applicant's affidavit in support]. This is disputed by the Respondents who contended that the defence  
20 complies with the relevant provisions of the CPR. [Para 7-11 of the affidavit in reply].

General Denials

**Order 6 Rule 8** of CPR provides:

25 "It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages."

30

In **Ecobank Uganda Limited v Kalson's Agrovet Concern Ltd & Anor HCCS 573/2016** the court, considering an allegation of general denials, held thus:

"It is clear in the instant case that the plaintiff made a claim basing on a loan facility advanced to the defendants. They attached a copy of an offer letter; the respective  
35 guarantees letters, repayment schedules and a formal demand to their plaint.



5 On the other hand, the defendants denied each claim and never responded to it in  
specific terms as required by the law. The defendants in their respective defences  
merely averred illegality and fraud and intended attempt by the plaintiff to enrich  
themselves. I have not seen any substantial defence or any intelligible response to  
10 the claim. Consequently, I find that the defence did not raise a reasonable answer to  
the applicant's claim and thus offended the provisions of O 6.r 8 of the Civil Procedure  
Rules. It is accordingly struck out."

The purpose of pleadings is to ensure that a party's claim or defence is clearly known, and the issues in dispute are easily capable of being ascertained.  
15 Therefore, a party's claim or defence should be stated clearly and be capable of being made out simply. In respect of a defence, it must give specific responses to the allegations of the plaintiff. See **Nile Bank v Thomas Kato & Ors HCMA 1190/1999, Vambeco Enterprises v Attorney General HCMA 265/2014, MHK Engineering Services Limited v Macdowell Limited HCMA 723/2018,**

20 I have read the decision of my learned brother Justice Vincent Wagona in **Byaruhanga Africano v UEDCL HCMA 67/2022** relied upon by the Respondents wherein his Lordship held that once a defendant disputes the allegations of the plaintiff and indicates that they will put the plaintiff to strict proof of the same, the  
25 plaintiff has supplied a sufficient defence within the provisions of the CPR.

A review of Order 8 Rule 1 and 3, 16, 17 of the CPR brings me to a contrary view. A plaintiff is required to make out their claim in a plaint by indicating clearly the grounds for their claim and the reliefs sought. The defendant must, in their  
30 defence, in a manner that is clear and concise (relative to the circumstances of the case) indicate whether they deny or acede to the claim or any part of it, and where they deny the claim, indicate the grounds on which they deny.

There are virtually limitless grounds on available to parties to deny claims. They  
35 may be immature, void, brought against a wrong party, brought in the wrong



5 forum, be fraudulent, be contested on the basis of non-delivery or over billing among others. If a defendant says "I deny liability", it would in theory mean each and every of these defences are available to the defendant and a court must try them. To cure this mischief, the defendant is required to show if they contest the claim, and why they contest it. That "why" should show the grounds why they  
10 contest the same and the facts supporting those grounds of objection. It is not enough to say "I deny liability and will put you to strict proof". This is because a trial is a trial of both the plaintiff's grounds of its claim as well as the defence's grounds for their defence. To achieve the same, the grounds underpinning the averments of both sides must be clear, as should the factual narration supporting  
15 those grounds. That way, a court will inquire into the factual narration underpinning the grounds (or the legal basis if such grounds are pure questions of law), identify whether such ground of claim or objection are made out, and enter a decision.

20 In my view, for a defence to comply with the relevant rules above, the grounds of defence must be made out, the narration underpinning such grounds should be made out and both must be made out in a manner that is reasonably clear.

A review of the Respondents' defence reveals that they denied the contentions in  
25 the plaint and made the following major averments

(a) The 2<sup>nd</sup> Defendant was not privy to the contract and is not liable.

(b) The bank guarantee was agreed to by the plaintiff and the defendants are not liable for the failure by the plaintiff to enforce the guarantee before its expiry.

30

The Respondents did not yield clear, direct and intelligible responses to the claims for non-payment of freight fees, misrepresentation, connivance or fraud but simply denied them. In my view, this is not sufficient. A defendant must render clear, precise and intelligible responses to all major averments by the plaintiff. For  
35 example, if a plaintiff claims that a defendant colluded with another party to



5     deprive him of his car by wrongly towing it, that defendant must engage this  
averment by yielding a specific answer that explains why, if this is untrue, they  
assert that it is untrue.

I find that the Respondents in their defence only partly rendered specific answers  
10   to the plaintiff's claim. I will deal with the effect of the same below.

### Evasive Denials

**Order 7 Rule 10** provides thus:

15   *"When a party in any pleading denies an allegation of fact in the previous pleading  
of the opposite party, he or she must not do so evasively, but answer the point of  
substance. Thus, if it is alleged that he or she received a certain sum of money, it shall  
not be sufficient to deny that he or she received that particular amount, but he or she  
must deny that he or she received that sum or any part of it, or else set out how much  
20   he or she received. If the allegation is made with divers circumstances, it shall not be  
sufficient to deny it along with those circumstances."*

Essentially, an evasive denial is one which is non-committal and attempts to yield  
a response without clearly answering the question or clearly responding to the  
25   contention. An evasive denial is essentially one which avoids giving a direct and  
clear answer to a contention, but instead renders an answer that is unclear or  
unrelated, and is manifestly aimed at appearing to respond but without  
committing oneself to a specific and clear response. This includes defences that  
"conveniently ignore" key averments by a plaintiff and neglect to issue a defence.

30

What is the effect of this?

In **Lakwo Roy & Anor v Santa Sarah HCCA 86/2018** Justice Mubiru held as  
below:

"An evasive denial of a fact alleged in the plaint does not suffice; such fact is  
35   deemed to be admitted."



5 In short evasive denial or non-specific denial constitutes an implied admission in a judicial proceeding of a civil nature. See **Vambeco Enterprises v Attorney General HCMA 265/2014**.

10 In **Peter Jogo Tabu v The Registered Trustees of the Church of the Province of Uganda HCCA 16/2017**, Justice Mubiru held thus:

“The combined effect of Order 6 rules 3, 8 and 10 of The Civil Procedure Rules is that any fact stated in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, is treated as admitted. A general denial or an evasive denial is not treated as sufficient denial and, therefore, the denial of allegations of facts made in the plaint, if it is not  
15 definite, positive and unambiguous, is treated as admitted under those rules.”

I have considered the defence by the Respondents. It appears to me that the Respondents’ defence is evasive in as far as it avoids answering the question  
20 whether the services claimed were consumed and whether the sums claimed are due and owing. The Respondents denied the plaintiff’s claim but did not render more to show whether they admit the use of the services and whether the sums are owing, but that the plaintiff “could have been paid if they had tried to from the liquidation of the guarantee”. The Respondents’ defence is also evasive in the sense  
25 that it generally denies the allegations of fraud, misrepresentation and collusion but doesn’t yield specific and direct answers.

Sham, frivolous, vexatious and an abuse of court process

I will now deal with the Applicant’s contentions on this head.

30

*Abuse of Court Process*

The Applicant contended that the Respondents’ defence constituted an abuse of court process.

In **King’s College Budo Staff Savings Scheme Limited v Zaverio Samula & Ors**  
35 **HCCS 26/2020**, the court defined abuse of court process thus:



5 “The term abuse of court process has the same meaning as abuse of judicial  
process. The employment of judicial process is regarded as an abuse when a party  
uses the judicial process to the irritation and annoyance of his opponent and the  
efficient administration of justice. It is a term generally applied to a proceeding,  
10 which is wanting in bona fides and is frivolous, vexatious or oppressive. The term  
abuse of process has an element of malice in it. The concept of abuse of judicial  
process is imprecise, it implies circumstances and situations of infinite variety and  
conditions.”

See also **Deox Tibeigana v Vijay Reddy HCMA 665/2019, Uganda Land**  
**Commission and Another V James Mark Kamoga and Another, SCCA No. 8 of**  
15 **2014, Meera Investments & Ors v Nathan Lukozi HCMA 399/2022**

In my view, the Respondents’ defence is wanting in detail and clarity, but cannot  
be said to be one that is totally not worth consideration. This is because the  
Respondents’ have raised and particularized at least one or two grounds of  
20 response, namely that the 2<sup>nd</sup> Respondent lacks privity which would make him  
liable and that guarantee was contractually compliant.

I find that the defence does not constitute an abuse of court process.

25 Sham, Frivolous and Vexatious

In **John Garuga Musinguzi & Anor v Dr. Chris Baryomunsi & Anor HCMC**  
**817/2016**, court defined frivolous and vexatious claims thus:

“A frivolous claim or complaint is one that has no serious purpose or value. Often  
a “frivolous” claim is one about a matter so trivial or one so meritless on its face  
30 that investigations would be disproportionate in terms of time and cost. The  
implication is that the claim has not been brought in good faith because it is  
obvious that it has no reasonable prospect of success and/or it is not a reasonable  
thing to spend time complaining about. A “vexatious” claim or complaint is one (or  
a series of many) that is specifically being pursued to simply harass, annoy or  
35 cause financial cost to their recipient.”



5 The question is whether the Respondents' defence is so lacking in merit (wanting in bonafides) that it is manifestly not worth determination by a reasonable tribunal and is only an irritation and annoyance to the Applicant.

Like I have already held above, the Respondents' have raised and particularized at  
10 least one or two grounds of response, namely that the 2nd Respondent lacks privity which would make him liable and that guarantee was contractually compliant that are worth investigation and decision b this Honourable Court. I therefore find that the Respondents' defence is not a sham, frivolous or vexatious.

15 Effect of Findings

I have found that the Respondent's defence consists of evasive and general denials in respect of the claims regarding collusion, fraud and recovery of the contract sums.

**Order 6 Rule 30** of the CPR provides thus:

20 "the court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just."

25

Reading the provision above with Section 98 of the Civil Procedure Rules, it follows that the court has largely three options in cases of this nature;

- (a) To strike out the pleading, or any part of it
- (b) To deem the evasive and/or general denials as admissions
- 30 (c) Order the defendant(s) to yield further and better particulars under Order 6 Rule 4
- (d) Order an amendment of pleadings under Order 6 Rule 19 to enable a party yield clear and precise responses



5 In my view, recourse can only be had to options (c) or (d) where the cause is an innocent lack of clarity or precision in the preparation of pleadings. Where there is evasive response, such options are unviable because the intention of the party guilty of the same was to disingenuously avoid rendering a response. In such cases, options (a) and (b) are, in my view, the appropriate options.

10

Considering the circumstances of this case, I find that the appropriate path of action is to deem the general and/or evasive denials above as admissions by the Respondents.

15 However, the part of the Respondents' defence not consisting of general denials is valid, and the hearing will proceed in respect of the same. For ease of reference, these are

(a) The contention that the 2<sup>nd</sup> Respondent is not liable to the plaintiff's claim as he was not privy to the contract. [Paragraph 5(b) of the defence]

20 (b) The contention that the bank guarantee complied with the parties' contract. [Paragraph 5(d) of the defence]

(c) The guarantee was sufficient to meet the plaintiff's claim and the failure to enforce the same by the plaintiff cannot attract liability for the defendants. [Paragraph 5(e) of the defence]

25

The trial will proceed only in respect to the above grounds of defence.

### **Conclusion:**

In the premises, I make the following orders;

30 (a) The Respondents' defence in the main suit consists of general and evasive denials.

(b) The Respondents' defence in the main suit is hereby deemed an admission of the contents of the plaint, save for paragraphs 5(b), 5(d) and 5(e) of the defence.



5 (c) The trial of the main suit shall proceed only in regard to grounds of defence contained in paragraphs 5(b), 5(d) and 5(e) of the defence.

(d) The Respondents' Written Statement of Defence filed in Civil Suit 0221 of 2023 is not a sham, frivolous, vexatious and/or an abuse of court process.


(e) 50% of the costs of this application be borne by the Respondents.

10

I so order.

Delivered electronically this 1st day of August 2023 and uploaded on ECCMIS.

15



Ocarra Thomas O.R.  
Judge,

**1<sup>st</sup> August 2023**