

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 637 OF 2016

**1. ALLELUIA REFLEXOLOGY HEALTH SOLUTIONS
AND NUTRITIONAL RESEARCH CENTRE LIMITED**
**2. AMOS MUGISHA T/A HELP LIFE REFLEXOLOGY
CENTRE**
**3. UNITED REFLEXOLOGISTS ASSOCIATION
(UGANDA) LTD ::: PLAINTIFFS**
**[Suing by Representative Action for themselves and on behalf of 67
other Reflexology Centres]**

VERSUS

ATTORNEY GENERAL ::: DEFENDANT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Plaintiffs brought a suit by an amended plaint filed on 1st July 2015 in their own right and on behalf of 67 other Reflexology Centres against the Defendant seeking declarations and orders for compensation for losses suffered during the period of the ban imposed on their reflexology centres and operations by the Minister of Health, for special damages, general damages, exemplary and aggravated damages, interest and costs of the suit. The Defendant filed a written statement of defence (WSD) on 10th August 2015 generally denying the allegations contained in the plaint, raised certain preliminary objections and prayed to court to dismiss the suit with costs. Later on, however, by letter dated 26th April 2017 addressed to the Registrar of this Court, the Defendant opted not to pursue the preliminary issues of law.

[2] When the matter came up before court for the preliminary steps, the Plaintiffs indicated to the Court that they intended to raise preliminary objections against the WSD filed by the Defendant. The Court directed that the objections be argued by way of written submissions; which were filed by counsel for both sides and have been adopted and considered by the Court.

Representation

[3] At the hearing, the Plaintiffs were represented by **Mr. Paul Rutisya** and **Mr. Denis Sembuya** while the Defendant was represented by **Ms. Patricia Mutesi** (then Commissioner) and **Mr. Richard Adrole** (Principal State Attorney) from the Chambers of the Attorney General.

The Preliminary Objections

[4] Counsel for the Plaintiffs raised three preliminary points of law, namely that;

- a) *The Defendant's Written Statement of Defence in Civil Suit No. 637 of 2016 be struck out for being evasive, containing general denial and failing to disclose a reasonable answer to the claims.*
- b) *Judgment on admission be entered in favour of the Plaintiffs against the Defendant.*
- c) *Judgment be entered on the liquidated claim and the rest of the claims be set down for formal proof.*

Consideration by the Court

[5] In the submissions, Counsel for the Defendant raised a contention purporting to withdraw the election by the Defendant not to pursue the preliminary points of law that were set out in their WSD. In my view, however, since the Defendant's Counsel communicated an unequivocal decision not to pursue the said objections, and the Plaintiff's Counsel and the Court relied on that representation, the same issue cannot be re-opened and the Defendant is

estopped from raising the same. I will, therefore, make no further consideration on that issue.

Preliminary Point One: The Defendant's WSD in HCCS No. 637 of 2016 contains evasive or general denials and discloses no reasonable answer to the Plaintiffs' claims.

Submissions by Counsel for the Plaintiffs

[6] Counsel for the Plaintiffs submitted that in terms of Order 6 rule 10 of the CPR, a defendant who denies an allegation of fact in the previous pleading of the opposite party shall not to do so evasively but shall answer the point of substance. Counsel cited the case of *Nile Bank & Anor v Thomas Kato, HCMA No.1190 of 1999* for their submission. Counsel further submitted that the Defendant's WSD contains evasive or general denials and contains no reasonable answer to the Plaintiffs' claims. Counsel pointed out that paragraph 3 thereof makes an admission, paragraph 4 makes a general denial while paragraphs 5, 6, 7 and 8 contain preliminary objections that the Defendant intended to raise but later withdrew. Counsel prayed that court strikes out the defence on account that it offends the provisions of Order 6 rules 8 and 10 of the CPR.

Submissions by Counsel for the Defendant

[7] In reply, Counsel for the Defendant disputed the contention that the written statement of defence was evasive or raised general denials and argued that there is no requirement to make specific denials to claims for damages since Order 6 rules 8 and 10 require defendants to make specific denials to allegations of fact except damages. Counsel submitted that the present suit which is essentially and substantially a suit for damages arising out of a previous suit is peculiar in that it arose out of a decided case which fact was not disputed and the defence to the claims for damages is not required to be specific. Counsel concluded that the Defendant averred in paragraph 8 of the

WSD that the plaintiffs are not entitled to the damages claimed which is a valid defence that cannot be struck out by the Court.

Determination by the Court

[8] Let me begin by setting out the provisions of Order 6 rules 8, 10 and 30 of the CPR which are relevant to the matter before me. Rule 8 thereof provides as follows;

“Denial to be specific

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 defense by way of counter claim, but each party must deal specifically with each allegation of fact which he or she does not admit the truth except for damages.”

[9] Rule 10 thereof provides as follows;

“Evasive denial

When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must do so not 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 he or she received. If the allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.”

[10] Rule 30(1) thereof provides as follows;

“Striking out pleading

(1) 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 defense being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment be entered accordingly, as may be just.”

[11] On the matter before me, it is clear from a reading of the WSD in issue that paragraph 3 thereof makes an admission, paragraph 4 makes a general denial while paragraphs 5, 6, 7 and 8 contain preliminary objections that the Defendant intended to raise but later withdrew. The admission in paragraph 3 is to the effect that the Plaintiffs moved the High Court by way of judicial review challenging the ban imposed on them by the Minister of Health, which decision of the Minister was quashed by the Court vide HCMC No. 12 of 2011. It is clear to me that the allegations contained in the plaint leading to the damages being claimed by the Plaintiffs were the subject of litigation in HCMC No. 12 of 2011. The court found wrongdoing on the part of the Respondent in the alleged terms and issued prerogative writs quashing the impugned decision and prohibiting the Defendant (then Respondent) or their agents from enforcing the same. That suit, which was by way of an application for judicial review, did not seek damages and was not meant to seek compensation for damage or loss suffered by the applicants. The proceeding was intended to impeach the impugned decision which object was achieved.

[12] That being the case, the Plaintiffs brought this suit, against the background of the decision in HCMC No. 12 of 2011, seeking compensation occasioned by the wrongful acts committed by the Defendant's servant or agent; which wrongs had already been proved by the applicants in the judicial review application. As such, since the Defendant did not intend to challenge the court decision in HCMC No. 12 of 2011, it admitted the part of the claim that contained facts that were proved in the said Cause. The Defendant needed not make any specific denial in respect of facts that were deemed to have been proved previously. They only needed to deny that which they contested, that is,

damages. According to the provision under Order 6 rule 8 CPR, a defendant does not need to make a specific denial in respect of a claim for damages. What comes out, therefore, is that in the present circumstances, the absence of a specific denial by the Defendant of the claims in the plaint does not make the WSD defective. Rather, it only makes those facts uncontested or proved. The Defendant remains entitled to only contest the claim for damages. From the record, the WSD in issue disputed the Plaintiffs' entitlement to the damages claimed. This affords the Defendant a sufficient answer to the Plaintiffs' claims in the plaint.

[13] In regard to the specific circumstances of this case, therefore, the claim by the Plaintiffs that the Defendant's WSD contains evasive and general denials is not made out. It is also not correct that the said WSD does not make a reasonable answer to the Plaintiffs' claims. This point of objection by Counsel for the Plaintiffs therefore has no merit and is overruled.

2nd & 3rd Preliminary Points: Judgment on admission be entered in favour of the Plaintiffs against the Defendant; and/or Judgment be entered on the liquidated claim and the rest of the claims be set down for formal proof.

[14] I have taken into consideration the submissions of both counsel on the issue concerning the admission made by the Defendant and the application by the Plaintiffs' Counsel for entry of a judgment on admission on that basis. An application for a judgment on admission is anchored on the provision under Order 13 rule 6 of the CPR which provides that any *"party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just"*.

[15] It is a settled position of the law that a judgment on admission is not a matter of right but rather one of discretion of the court. The admission must be unambiguous, clear, unequivocal and positive. Where the alleged admission is not clear and specific, it may not be appropriate to take recourse under the provision. See: *Future Stars Investment (U) Ltd v Nasuru Yusuf*, HCCS No. 0012 of 2017. The Judge's discretion to grant judgment on admission of fact under the law is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling a plaintiff to judgment. See: *Cassam v Sachania* [1982] KLR 191 and *The Board of Governors Nebbi Town S.S.S v Jaker Food Stores Limited*, HCMA No. 0062 of 2016.

[16] On the present case, and as I have pointed out above, although the WSD of the Defendant contains an admission, it is not an admission as to the substance of the claim as raised by the Plaintiffs. The facts admitted by the Defendant do not answer the principal claim of the Plaintiffs; which is, compensation in damages as set out in the plaint. Nowhere in the WSD does the Defendant admit liability for any damages suffered by the Plaintiffs, let alone in the particulars set out and claimed. As such, there is no basis for the Plaintiffs to seek for any judgment on admission. Clearly, the Defendant denied any entitlement to damages by the Plaintiffs. This point of objection is also devoid of merit and is rejected.

[17] Following my finding on the above two points, the claim by the Plaintiff that judgment be entered on the liquidated claim and the rest of the claims be set down for formal proof becomes misplaced. It has been proved that the Defendant has a valid defence against the Plaintiffs' claim for damages. It has also been established that the Plaintiffs are not entitled to any judgment on admission. As such, all the preliminary points of law raised by Counsel for the

Plaintiffs have not been made out and have accordingly failed. The objections are dismissed with costs to the Defendant. The hearing of the suit shall proceed on the question of damages which is contested.

It is so ordered.

Dated, signed and delivered by email this 27th day of November, 2023.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long, sweeping horizontal stroke extending to the right.

Boniface Wamala

JUDGE