

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISC. APPLICATION NO. 067 OF 2022**  
**(ARISING OUT OF CIVIL SUIT NO. 032 OF 2022)**

5 **BYARUHANGA AFRICANO ::: APPLICANT**

**VERSUS**

**UGANDA ELECTRICITY DISTRIBUTION**  
**COMPANY LIMITED (UEDCL) ::: RESPONDENT**

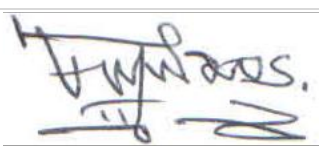
10 **BEFORE HON. JUSTICE VINCENT WAGONA**

**RULING**

This application was brought under section 98 of the Civil Procedure Act and Order 6 rule 8, 10, 30 and 31, Order 52 rules 1 & 2 of the Civil Procedure Rules for orders that:

- 15
1. The defence filled by the respondent on the 20<sup>th</sup> of June 2022 in Civil Suit No. 032 of 2022 be struck out for offending Order 6 rules 8, 10 and 30 of the Civil Procedure Rules.
  2. That Judgment be entered against the Respondent/defendant for liability in negligence and the suit be set down for formal proof of damages.
  - 20 3. That the costs of the application be provided to the Applicant.

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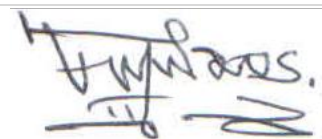


The grounds in support of the application are contained in the supporting affidavit deponed by the applicant in which he averred thus:

1. That he filed Civil Suit No. 032 of 2022 against the respondent and under paragraph 3 and 5 of the plaint, he pleaded negligence on the part of the Respondent and under paragraph 4 he stated the circumstances under which negligence occurred.
2. That in response thereto, the Respondent did not deny any of the allegations by the plaintiff but made a general denial. That he also relied on the doctrine of *res ipsa loquitur* and the respondent did not make a single response over the same in her written statement of defense.
3. That the defense filed by the Respondent contains only general denials to his claims and is in contravention of the relevant laws. That the Respondent has no single defense to the Applicant's allegations in the plaint save for general denials. That it is in the interests of justice that the application is allowed with the prayers it seeks.

The Application was opposed by the Respondent through the affidavit in reply deponed by Esther N. Mulyagonja, the Respondent's Company Secretary who stated that:

1. That the Respondent filed her written statement of defense on 20<sup>th</sup> June 2022 and accordingly served the Applicant/plaintiff. That the defense was filed in accordance with the law and it neither offends the civil procedure rules nor any other law.



2. That the written statement of defense responded to the claims by the plaintiff and does not contain general denials as alleged by the Applicant. That the defense attached by the Applicant left out page 2 of the defense which contained the Respondent's response to the plaintiff's claim. That the Applicant's actions are malicious, fraudulent and an attempt to give wrong information to court.

3. That the Respondent replied to the plaintiff's demand notice and the same was received by his Counsel. That this application is a deliberate attempt to waste court's time and cause backlog and that the same should be dismissed.

### **Representation:**

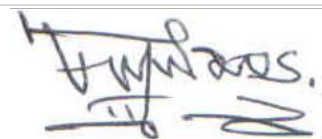
The Applicant was represented by *M/s Mwesigye Mugisha & Co. Advocates* while the Respondent was represented by the *Legal Department of Uganda Electricity Distribution Company Ltd.* Both parties proceeded by way of written submissions which I have considered in this ruling.

### **Issues:**

Two issues were framed for determination thus:

- 1. Whether or not the Written Statement of Defense filed by the Defendant/Respondent offends Order 6 rules 8, 10 and 30 of the Civil Procedure Rules.**
- 2. Remedies available to the parties.**

### **Submissions:**

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*Applicant's submissions:*

It was contended for the Applicant that the defense filed by the Respondent to the plaintiff's claim contained general and evasive denials contrary to Order 6 rule 8, 10 and 30 of the Civil Procedure Rules. That the Respondent did not make a  
5 specific response to the plaintiff's claims in the pleadings thus rendering the defense liable to be struck out with costs.

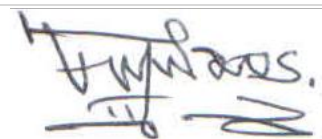
*Respondent submissions:*

10 The Respondent contended that the written statement of defense filed was in accordance with the law and specifically Order 6 of the Civil Procedure Rules. That the Respondent responded to the Applicant's claim of negligence under paragraph 9 of the written statement of defense and all other allegations were addressed in the defense. Counsel contended that the Applicant maliciously  
15 removed the second page of the defense which contained the specific response to mislead court and asked court to have the case dismissed with costs.

**CONSIDERATION BY COURT:**

20 Order 6 rule 8 provides thus:

*"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*

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*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.”*

Rule 10:

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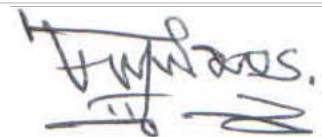
*When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance. Thus, if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that particular amount, but*  
10 *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*

Rule 30(1):

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*“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*  
20 *entered accordingly, as may be just.”*

It accrues from the above rules that a defense must reply to the contents of the claim in a specific manner. The responses should be intelligible, clear, and precise, linked to the claim by the plaintiff and should give an answer to an allegation by

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the claimant. A general or evasive denial renders the defense incurably defective and liable to be struck out and not even article 126 (2) (e) can save such.

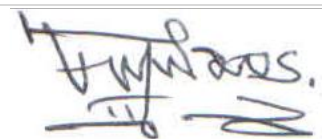
In **MHK Engineering Services (U) Ltd vs Macdowell Limited** the Hon Justice Wamala cited a passage from *Odgers Principles of Pleading and Practice, 22nd Edition, at page 136*, that provides useful guidance on the test for evasive defences and general denial. The principle is laid down as follows:

10 *“It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim ... Each party must traverse specifically each allegation of fact, which he does not intend to admit. The party pleading must make it clear how much of his opponent’s case he disputes.”*

Further Astbury, J., in *Weinberger V. Inglis (1916-17) All E.R. Rep. 843*, noted in relation to the issue I am investigating thus:

15 *“As a general rule, the court never orders a defendant to give particulars of facts and matters which the plaintiff has to prove in order to succeed, and this is especially the case where a defendant has confined himself to putting the plaintiff to the proof of allegations in the statement of claim, the onus of establishing which lies upon him.”*

20 SPRY, J.A in *Namardashanker Manishanker Joshi Vs. Uganda Sugar Factory Ltd, Civil Appeal No 16 of 1968*, observed that what is expected of the defendant is to furnish particulars where he is making a positive averment and to plead facts on which he seeks to defend himself to avoid surprises during trial.

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In the Indian case of *Balinda Prasad Vs. United Bank of India Limited and others, AIR 1962 Pat 153*, it was observed that the defendant is expected to respond to the main allegations which form the foundation of the suit and not every fact pleaded by the plaintiff.

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The above analogy leads to the conclusion that what the defendant is supposed to do is to put up a defense requiring the plaintiff to prove his case. He or she is not under any legal obligation to plead facts. As long as he denies the plaintiff's claim as not being true, that is sufficient to put the plaintiff to the task to prove his claim.

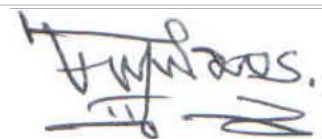
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In the case before me, the plaintiff's claim is in negligence. The plaintiff contended that the defendant was negligent when she let her electricity pole fall on his house located at Rugonjo Trading Centre in Kahunge Town Council, Kamwenge District on 2<sup>nd</sup> April 2020. That as a result of negligence, the plaintiff's house was damaged to wit, the whole outside shade and cracks were seen on the building putting the plaintiff's life at risk. Therefore, the plaintiff's claim was in negligence.

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The Respondent in her written statement of defense under paragraph 4 denied being negligent and in paragraph 5, she respondent that; "*The defendant makes no admission of the particulars of negligence pleaded in paragraph 5 of the plaint and shall contend that the plaintiff is not entitled to any of the prayers therein and he shall be put to strict proof thereof.*". This in my view meant that the defendant did not admit the plaintiff's claim or negligence and the particulars thereof and this thus put the plaintiff to strict proof to prove his claim of negligence and the

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particulars thereof before succeeding in his suit. This in my view was sufficient reply by the defendant to the claim by the plaintiff.

Further the defendant under paragraph 9 in reply to paragraphs 3 – 8 of the plaint,  
5 contended thus:

*(a) It was not negligent as the impugned pole was firm and of acceptable standard.*

*(b) the cause of the leaning was due to heavy rains and strong winds which it  
10 had no control over.*

*(c) the leaning did not cause any cracks on the plaintiff's house.*

*(d) the respondent responded promptly and isolated and rectified the fault and the business of the plaintiff was not affected.*

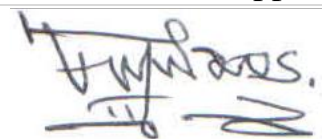
*(e) there was no injury caused on the plaintiff's employees as alleged or at all*

*(f) and if the plaintiff shifted at all, it must be for a different reason or to derive  
15 unjust enrichment.*

*(g) that the doctrine of res ipsa loquitur is inapplicable in the case instant.*

In my view, from the above paragraphs the Respondent responded to the plaintiff's  
20 claims to which the defendant denied being negligent and put forward facts requiring the plaintiff to prove his claim to disprove the defense put forward. The Respondent's written statement of defense is not evasive and neither does the same contain general denials as claimed by the Applicant.

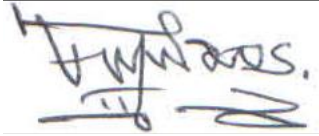
25 This application has no merit and was presented without due regard to the Respondent's written statement of defense and the applicable law. The application

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is therefore fails and it is accordingly dismissed with costs awarded to the Respondent.

It is so ordered

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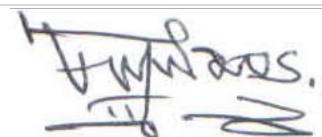
Vincent Wagona

**High Court Judge**

**FORT-PORTAL**

**27.02.2023**

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