THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 238/2019
(Arising from Labour Dispute Claim No. 139/2019)

MUTWAZAGYE NICHOLAS:::CLAIMANT

VERSUS

THE ELECTORAL COMMISSION:::RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. Mr. JIMMY MUSIMBI
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA

RULING

Introduction

1.0 When this matter came up for hearing on the 28th day of October 2022, Mr. Benard Olok, appearing for the Claimant raised a preliminary point of law, to the effect that the Respondent's Memorandum in Reply was evasive. Mr. Olok submitted that the Memorandum in reply did not specifically deny any of the paragraphs of the claim and offends Order 6 Rule 18 of the Civil Procedure Rules S.I 71-1 **("CPR")** which requires a written statement of defence to state precisely and sufficiently, the grounds of defence. Read together with Order 6 Rule 10, Mr. Olok prayed that there being no specific denial of the claim, the memorandum be struck pout and the claim proceed ex-parte to establish the damage suffered.

2.0 Mr. Godfrey Musinguzi, appearing for the Respondent, sought and was granted time to and filed a written response. By the said response, he made the following points:

(i) The preliminary objection was meant to divert the proceedings. No notice of change of Advocates had been served on Counsel for the Respondent at the time of filing the response.

(ii) The fact that the Claimant's employment was admitted. He cited the case of **Nelson Kawalya vs Sebanakita Hamis**[1] in support of the proposition that court may require proof of admitted facts. He suggested that all the evidence ought to be tested by the Court.

(iii) Citing **Libya Arab Bank vs Intrepo Ltd(1988) HCB** in support of the proposition that a denial of debt was a perfectly proper defence.

(iv) Counsel proposed that the Memorandum in Reply did not prejudice the Claimant and made some reference to the grounds of dismissal.

2.1 Counsel submitted that under Order 8 Rule 3 of the CPR required admitted facts to be proved otherwise than by admission and thus that this matter could only be resolved at a trial. He cited Order 6 rule 30 of the CPR on the discretion of court to ensure that evidence is heard at trial. Counsel relied on the case of **Joseph Nanjubu vs Frank Kintu Musa Nsimbe**[2].

2.2 In closing, Counsel suggested that the Claimants dismissal was justified and that this Court ought to hear and resolve the matter. He prayed that the preliminary objection be dismissed with costs.

3.0 In rejoinder, Mr. Olok submitted that the Respondent's reply was misconceived as it was founded on Order 6 rule 6 CPR yet the objection was

[1] H.C.M.A 1534 of 2020
[2] H.C.M.A 77 of 2011

based on Order 6 rules 8 and 10 CPR. Counsel pointed out that paragraphs 3 and 4 of the Memorandum of Reply filed on 20th May 2020 simply stated that the Claimant would be put to strict proof. He cited the case of **Nile Bank Ltd & Anor vs Thomas Kato & Ors** [3] and **Ecobank Uganda Ltd vs Kalsons Agrovet Concern Ltd and 2 Others**[4] in support of the prayer to strike out the memorandum of reply in accordance with Order 6 rule 30 CPR.

3.1 Mr. Olok also distinguished the **Libya Arab Bank**(supra) case from the present claim. He submitted that in that case the defence to the debt was concise and precise while in the instant case the defense is evasive and a general denial. He also distinguished the case of Joseph Najubu(supra) because there was no decree to set aside.

Analysis and Decision of the Court

4.0 The question that this Court is invited to consider is whether the memorandum of reply filed by the Respondent is general and evasive. Without reproducing the memorandum of claim verbatim, the Claimant's claim was for salary arrears, severance allowance, repatriation fee non-remittance of social security benefits interest thereon, unpaid accumulated annual leave, general damages for wrongful dismissal, interest, costs and reinstatement to employment. In response thereto, the Respondent filed the following memorandum of reply:

> " *MEMORANDUM IN REPLY*
>
> *Save what is herein specifically admitted to be true, the respondent denies each and every allegation of fact and claim together with the particulars thereof contained in the*

[3] H.C.M.A No. 1190 of 1999
[4] H.C.C.S No.573 of 2016

claimant's memorandum of claim as if the same were herein set forth and traversed seriatim.

1. *Paragraph 1 & 2 of the Memorandum of claim is admitted and the respondent adds that its address of service of the claim shall be Electoral |Commission Legal Department, and P.O Box 22678 Kampala.*

2. *Paragraph 3,4(n) in respect to notice to show cause, 4(s)*

   in respect to lodging a compliant and 4(t) on inability to resolving the dispute all of the Memorandum of claim are admitted save for respondent denials of each and every allegation, the claimant will be put to strict proof.

3. *Paragraph 1,2,15,16, 18 and 19 of the Affidavit verifying the claim are admitted.*

4. *Paragraph 4,5,6,7,8,9,10,11,13,17,20,21 and 22 of the Affidavit verifying the petition are denied, the claimant will be put to strict proof. (Copies of relevant documents in support of respondents cause are attached and marked, R2,R2,R3,R4,R5,R6,R7,R7,R8,R9,R10,R11,R12,R13,R14)*

WHEREFORE the respondents prays for orders against the claimant for:

a) An order dismissing the claimant claim

b) An order directing that the claimant pays damages for malicious prosecution to the respondent

c) Costs of the suit.

Dated at Kampala this 13th day of MARCH 2020

COUNSEL FOR THE RESPONDENT……"

We have reproduced the memorandum in reply verbatim and made no allowances for errors and omissions.

5.0 The law relating to evasive and general defences is set out the provisions of Order 6 Rules 8 and 10 of the CPR.

5.1 Order 6 Rule 8 provides as follows:

> *"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 counterclaim, but each party must deal specifically with each allegation of fact which he or she does not admit the truth, except damages."*

Therefore, a denial must be specific. General denials offend the rules of procedure.

5.2 Order 6 Rule 10 provides that;

> *"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 he or she received. If the allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances"*

From this provision, it is discernable that a statement of defence should disclose a defence in law and or have a reasonable answer to the claim. In the case of **MHK Engineering Services (U) Ltd vs Macdowell Limited**,[5] the Honourable Mr. Justice Boniface Wamala a passage from Odgers Principles of Pleading and Practice, 22nd Edition, at page 136, provides useful guidance on the test for evasive defences and general denial. The principle is laid down as follows:

> *"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*."

His Lordship found this passage to be in similar terms to the provisions of Order 6 Rule 8 of the CPR. We find this position to be very instructive.

5.3 Returning to the memorandum in the case before us, the Claimant's memorandum of claim made clear averments. Paragraph 4 made specific averments on the dismissal of the Claimant from employment with the Respondent on account of loss of some **UGX 97,570,000/=(Ninety Seven Million, Five Hundred Seventy Thousand Shillings)** falsification of documents or records, failure to give the Claimant a fair hearing, forgery, intent to defraud, persistent misconduct, abseentism, misuse of the official vehicle and disrespectful behaviour. The Respondent simply denied this in paragraph 2 of the memorandum of claim. The Respondent did not offer any reasonable defence to the claim. Under Section 68(1) of the Employment Act, 2006, it is provided that in a claim arising out of termination the employer shall prove the reason or reasons for the dismissal. Clearly therefore, the Respondent would be required to furnish the reasons for the claimant's dismissal in the memorandum of claim. These would have formed the specific denials and answer to the claim. We agree with Mr. Olok that the

[5] H.C.M.A 825 of 2018

cases cited by the Respondent did not aid the Respondents case. We find that no reasonable answer was provided within the memorandum of reply filed by the Respondent on 20th March 2020. We find that it offends the provisions of Order 6 rule of the CPR.

5.4 In respect of the evasive denials, there was no single averment in the memorandum of reply that was answer on a point of substance. The claim was for wrongful dismissal. The memorandum in reply did not make any averments that the dismissal was justified. We are unable to accept the argument of the Respondent that the greater question is whether the memorandum in reply prejudices the claimant considering that the main issues will help him appreciate the content of the claim. This argument is strange in light of the clear provision of the law. The denials must not be evasive. The system of pleadings is to enable the parties understand and prepare their respective defences to the opposite parties case. Evasive denials are unhelpful in this journey. In terms, it must be apparent as to what the respondent's version of events is in order that the issue or issues be set down for determination. In the instant case, the Respondent did not offer any particulars of its version of events. We agree with the submission of Counsel for the Claimant that the denials were evasive. We therefore find that the memorandum of claim offends the provisions of Order 6 rule 10 of the CPR.

5.5 Under Order 6 Rule 30(1) of the CPR (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 judgement be entered accordingly, as may be just. In the cases of **Nile Bank Ltd & Anor vs Thomas Kato & Ors(supra)**[6], **Ecobank Uganda Ltd vs Kalsons Agrovet Concern Ltd and 2 Others(supra)**[7]**,** there is a unanimity of judicial view that were no

[6] Per the Hon. Lady Justice M.S Arach Amoko(As she then was) The defence filed did not disclose any reasonable defence to the plaint. It was a general denial and was frivolous and vexatious.

[7] Per the Hon. Mr. Justice B. Kainamura. There was no substantial defence, intelligible response or reasonable answer to the claim and it was struck out.

substantial defence, intelligible responses, reasonable answer for claim, the statement of defence would be struck out. [8]

5.6 In seeking some form of relief from the prayer to strike out the memorandum in reply under Order 6 Rule 30, Counsel for the Respondent cited the case of **Joseph Nanjubu vs Frank Kintu Musa Nsimbe (supra)** in support of the proposition that the Court retains a discretion to stay, dismiss of enter judgment in a suit in which the defence has been found to be frivolous and vexatious. A revisit to the Nanjubu case is particularly instructive on the point. In that case, the Hon. Mr. Justice Madrama(as he then was) declined to rule on the application to strike out the defence on the ground that it would not give effect to the intention of the Court which set aside an exparte decree to enable a defence to be filed and the matter be heard on the merits. His Lordship posited that the Plaintiff would suffer no prejudice and could raise the issue of competence of the impugned pleadings at the end of the hearing in final submissions. In the case before us, the circumstances are somewhat different. There is no such decree that was set aside to give intention to the Court to hear the matter on the merits.

5.7 Be that as it may, the Respondent attached numerous documents to the memorandum of reply that appear to constitute the events leading to the dismissal of the Claimant. These documents include the letter of dismissal, the appeal against dismissal, warning letters, internal memos, medical records and correspondence from the Claimant. In the **Libyan Arab bank case (supra)** the Honourable Mr. Justice B.J Odoki held that ***"it is well established that in considering applications under Order 6 rule 29(now rule 30) the court should look at the pleadings above and any Annextures thereto, and not any subsequent affidavits***". The reference to rule 29, in that case, would be a reference to rule 30 under the CPR as Amended. This relief would invite this Court's discretion sitting as a Court of Equity to consider the attachments. Those attachments require some inquiry. To do so entails permitting the Respondent to participate in the proceedings and preserving the Claimant's right to raise the deficiency in the Respondent's pleadings at

[8] See also Kayondo V Attorney General [1988-1990] HCB 127,

the end of the hearing. In the case of **Tembo Steels (U) Ltd vs Wamala Collins**[9] this Court observed that it sits as a court of equity. In a general juristic sense, the dictum of equity *ubi jus ibi remedium* (equity will not suffer a wrong to be without a remedy) would be applicable. Additionally, Article 126(2) (e) of Constitution of the Republic of Uganda enjoins the Courts, in the administration of justice, to administer substantive justice without undue regard to technicalities. In keeping with this constitutional dispensation it would be necessary to investigate the substance of the disputes and decide the matter on the merits. In that regard and in the exercise of our discretion, we decline to strike out the Respondent's memorandum in reply. We are minded that the matter was set down for hearing. The parties have filed a joint scheduling memorandum and witness statements. It can be expeditiously disposed of and in that regard it is set down for hearing on the Thursday 16th March 2023 at 11:30 a:m. Costs shall abide the outcome of the main reference.

Dated, signed and delivered at Kampala this 13th day of January 2023

SIGNED BY:

1. **ANTHONY WABWIRE MUSANA, Judge** _____

PANELISTS

1. **Mr. JIMMY MUSIMBI** _____
2. **Ms. ROBINAH KAGOYE** _____
3. **Mr. AMOS CAN LAPENGA** _____

Delivered in open Court in the presence of:

The Claimant(Mr. Mutwazagye Nicholas)

Court Clerk. Mr. Samuel Mukiza.

[9] LDMA NO.261 of 2019