



**Kanyali v Fidelity Commercial Bank Ltd (Civil Suit 709 of 2009)
[2024] KEHC 9190 (KLR) (Commercial and Tax) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9190 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 709 OF 2009
A MABEYA, J
JULY 31, 2024**

BETWEEN

JOHN JOEL KANYALI PLAINTIFF

AND

FIDELITY COMMERCIAL BANK LTD DEFENDANT

RULING

1. The suit herein was filed on 1/9/2009 by the plaintiff. The suit was tried before Sewe J who by a judgment dated 3/7/2020 ordered that there be a reconciliation of the plaintiff's loan Accounts with the defendant by an independent financial, accounting or audit firm.
2. The defendant appointed IRAC who computed the accounts upto 2023 and prepared a report dated 30/11/2023. The plaintiff disputed the same as it contained entries until 2023 and not upto the date of the judgment. The defendant held firmly that the report was as per the judgment.
3. I have considered the judgment. It held in the penultimate paragraph as follows: -

“That an Order be and is hereby made for reconciliation of all the plaintiff's loan accounts with the defendant by an independent financial, accounting or audit firm to be agreed between the parties and/or appointed by the Court on such terms as the Court shall determine on notice to the parties.”
4. The view I take is that the judgment did not specify the period of the reconciliation. Since it did not do so, it could not have been speculating as to the future. It must have intended to refer to the evidence that had been produced before it.



5. Accordingly, I hold that the accounts to be reconciled are those that were in existence as at the date of the judgment, 3/7/2020 and nothing else.
6. In this regard, I set aside the report of IRAC dated 30/11/2023 and direct that the reconciliation be done up to 3/7/2020.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2024.

A. MABEYA, FCI ARB

JUDGE

