



**Autofine Limited & 2 others v Equity Bank (Kenya) Limited (Commercial Case E092 of 2020)
[2024] KEHC 15489 (KLR) (Commercial and Tax) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15489 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E092 OF 2020
MN MWANGI, J
NOVEMBER 26, 2024**

BETWEEN

**AUTOFINE LIMITED 1ST PLAINTIFF
PENINAH NJERI NDUATI 2ND PLAINTIFF
JULIA MWIHAKI KINANDU 3RD PLAINTIFF**

AND

EQUITY BANK (KENYA) LIMITED DEFENDANT

RULING

1. I have considered the oral application made by the plaintiff to have a Report prepared by PW2 produced in evidence, by the said witness being allowed to file his Report which was inadvertently omitted when the plaintiff's Trial bundle was being filed.
2. The plaintiff's Advocate has explained that the Report to be filed for production by PW2 will only address the discrepancy in the amount paid by the plaintiffs for the three (3) facilities, and what was supposed to have been paid under the facility letter.
3. From the evidence adduced by PW1, I did not hear him addressing the said issue in regard to the total amount that was paid to the defendant from the facility letter, for the three (3) facilities, and the actual amount paid by the plaintiff. There will therefore be no gap or shortcoming from the evidence that PW1 adduced that PW2 will be coming in to fill or rectify. In my understanding, PW2 will adduce evidence on a professional basis from calculations made by him.
4. Secondly, the witness had already been lined up to testify by the plaintiff from the beginning. He is not a witness that the plaintiff now wishes to bring on board at this stage.



5. I therefore do not agree with Mr. Oketch for the defendant that the Report that PW2 intends to produce is meant to fill in gaps in the plaintiff's evidence.
6. Thirdly the plaintiff has not closed its case.
7. Fourthly, the defendant's Counsel will have an opportunity to cross-examine the witness (PW2).
8. I hereby give the plaintiff 14 days to file and serve the Report prepared by PW2.
9. Leave is granted to the defendant to file any additional evidence in response to the Report to be filed by the plaintiff. The leave granted will be for 21 days.
10. This case will be mentioned on 27/1/2025 to take a further hearing date.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF NOVEMBER 2024,
RULING DELIVERED IN OPEN COURT.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Christopher Rosano for the plaintiff

Mr. Oketch for the defendant

Ms B. Wokabi – Court Assistant.

