



REPUBLIC OF KENYA



KENYA LAW
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**Gijomi Company Limited v Equity Bank (K) Limited (Civil Suit
E001 of 2022) [2023] KEHC 25722 (KLR) (27 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL SUIT E001 OF 2022
WM MUSYOKA, J
NOVEMBER 27, 2023**

BETWEEN

GIJOMI COMPANY LIMITED PLAINTIFF

AND

EQUITY BANK (K) LIMITED DEFENDANT

JUDGMENT

1. The plaintiff, at all material times, operated a bank account with the defendant, whose details are set out in the plaint. Its complaint is that it established on 6th October 2021, that the defendant had, on 26th September 2021, released a statement on the plaintiff's account, for the period disclosed in the plaint, to a third party, and avers that that was done in breach of the bank-customer confidentiality, to the detriment of the plaintiff. It is averred that there was an implied term of the bank-customer contract between the parties hereto, that the defendant, as a banker, was not to divulge to third parties, without the consent of the plaintiff, either the state of the bank account of the plaintiff, or the transactions in the account, or any information relating to the plaintiff. The plaintiff alleges that that was breached, and its financial standing was made public to its would-be competitors. It seeks general, exemplary and punitive damages; costs and interests.
2. The defendant filed a defence, where it denies breaching the bank-customer confidentiality as alleged. It avers that it was named a third party in another suit, being Busia HCCC No. E002 of 2020, Chefwest Hotel Limited & another vs. Lynn Mildred Bett & others, from which the instant dispute arose.
3. A trial was conducted, in which Lynn Mildred Bett testified for the plaintiff. She was a director of the plaintiff. She stated that she did not authorize the defendant to release the accounts of the plaintiff, and that there was no court order allowing such release. At the time of the disclosure of the accounts, the defendant was not a party to the suit in Busia HCCC No. E002 of 2020, and although the Kenya Commercial Bank was a party, that bank did not produce any documents in that suit. She asserted that the plaintiff and Chefwest Hotel Limited were not sister companies. She further stated that Chefwest



Hotel Limited and Chrispinus Mutsami Muteshi were parties in Busia HCCC No. E002 of 2020, but the plaintiff was not. She stated that Chrispinus Mutsami Muteshi was not a partner in the defendant, but in Chefwest Hotel Limited. She stated that Chefwest Hotel Limited was not a shareholder in the plaintiff, but its offices were the registered office for the plaintiff. She explained that Chefwest Hotel Limited only hosted the plaintiff in its premises, and that it did not run the plaintiff. She said that the information released by the defendant was being used to the detriment of the plaintiff, by Chrispinus Mutsami Muteshi, in Busia HCCC No. E002 of 2020. She stated that the information was released to all the parties in Busia HCCC No. E002 of 2020, and was done despite a court order to the contrary. She averred that the court had said that the defendant had acted prematurely. She complained that the clients of the plaintiff were exposed to third parties.

4. The principal document relied on by the plaintiff was a ruling delivered on 27th October 2021, by Karanjah J, in Busia HCCC No. E002 of 2020. In that suit, Chefwest Hotel Limited and Mr. Muteshi had sued Ms. Bett, the defendant and Kenya Commercial Bank. The principal order sought was for permanent injunctions, to restrain Ms. Bett from interfering with the management of Chefwest Hotel Limited. An interlocutory application was then filed, seeking joinder of the defendant and Kenya Commercial Bank, and an order for the 2 banks to release bank statements relating to accounts operated in the 2 banks. Kenya Commercial Bank ignored the proceedings, but the defendant, through Mr. Koech, responded, opposing the joinder, and releasing the bank statements sought. The court ruled that that was premature, for the defendant was not yet joined as a party, and there was no order for release of the documents. In the end, the court declined to allow the joinder.
5. Hilary Kosgei, a manager with the defendant, testified for the defendant. He conceded that he was the one who released the information, when he was the customer relations manager. He stated that bank account statements were confidential, depending. He said that he was aware that there was a court case between the parties, and of wrangles between them. He stated that the defendant was not party to the suit, but it was ready to release whatever documents were in its possession. He conceded that as a bank there was a wider duty to do due diligence before releasing documents relating to a customer. He stated that he was aware that Ms. Bett was the main director in the plaintiff, and that she and Mr. Muteshi were directors of Chefwest Hotel Limited, but acknowledged that that did not make the 2 companies sister companies. He said that documents are not released by the bank to whoever sought them, for they were confidential. He conceded that there was no court order for release of the information, and there was no consent either from the plaintiff. He conceded that the court had ruled that that release of documents was premature. He denied that the defendant acted incompetently, or in collusion. He said that the documents were released to the court, and not to Mr. Muteshi. He said that the defendant merely acted on an application served upon it, it acted in good faith, and did not breach confidentiality. He added that the defendant did not require any court order to release the material.
6. At the end of the oral hearings, the parties filed written submissions.
7. The matter is fairly straightforward. The defendant disclosed bank details of the plaintiff without any justification. There was no court order. The defendant had not yet been made a party to the suit. The decision to share the information was irrational and unjustified. It is my finding and holding that there was breach of bank-customer confidentiality.
8. The plaintiff prays for general damages. It is trite that general damages for breach of contract are not available or awardable. The rationale being that such a breach ought to attract liquidated damages, where the injured party would be entitled to quantify or calculate its loss, and claim the same. The plaintiff has not quantified or calculated the loss that has flowed from that breach, save to say that that information was being used by Mr. Muteshi to its detriment. The innocent party ought to be put into the position they occupied before the breach, and that would require the making of a liquidated



claim. No such claim has been made herein. See [Kenya Women Microfinance Ltd vs. Martha Wangari Kamau](#) [2021] eKLR (Mwita, J) The other claim is for exemplary and punitive damages. This category of damages is not available under breach of contract. The same are recoverable in tort, or in claims against the government, or its agencies. The claim by the plaintiff is anchored in contract, not tort. Paragraphs 4, 5, 6 and 7 allege breach of contract. Consequently, I am unable to make an award for exemplary or punitive damages.

9. On assessment of damages, I note that the plaintiff did not lead any evidence relevant to assessment of damages, in terms of any quantifiable loss suffered by it, flowing naturally from the breach complained of. So, I have no basis upon which I can quantify the loss allegedly suffered by the plaintiff. I have perused the authorities placed on record by the plaintiff, and I find that none of them are of any assistance. None of them touch on breach of the bank-customer confidentiality.
10. In view of the above, there is no basis upon which I can award any damages to the plaintiff, and I accordingly dismiss the suit herein. Should I award costs against the plaintiff? No. The defendant acted in a very dishonourable manner and does not deserve costs. Let each party bear their own costs. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 27TH DAY OF NOVEMBER 2023

WM MUSYOKA

JUDGE

Advocates

Ms. Wanjiru, instructed by Otieno Wanjiru & Company, Advocates for the plaintiff.

Mr. Ouru, instructed by Oundo, Muriuki & Company, Advocates for the defendant.

