



**Kenyariri v Double Win Company Limited & 3 others (Environment & Land
Case E288 of 2022) [2025] KEELC 1466 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E288 OF 2022
CG MBOGO, J
MARCH 20, 2025**

BETWEEN

CHRISTOPHER O KENYARIRI PLAINTIFF

AND

DOUBLE WIN COMPANY LIMITED 1ST DEFENDANT

MIA YUNFEI 2ND DEFENDANT

LIU YUPING 3RD DEFENDANT

EQUITY BANK (KENYA) LIMITED 4TH DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 19th September, 2024, filed by the plaintiff/applicant, and it is expressed to be brought under Order 7 Rule 5, Order 11 Rule 3(a) and (b) of the Civil Procedure Rules, Sections 1A,1B & 3A of the [Civil Procedure Act](#) and Article 35(b) of [the Constitution](#) seeking the following orders:-
 1. The 4th defendant do produce on oath copies of statement of the loan account for the 1st defendant clearly indicating that indeed on 01.10.2021 the 4th defendant cleared the loan balance in the 1st defendant's books.
 2. The 4th defendant do produce on oath copy of a duly executed discharge of charge form duly executed by the 4th defendant's registered bank attorney's with their bank numbers inscribed.
 3. The 4th defendant do produce on oath the securities withdrawal request form dated 21.10.2021 in relation to the loan advanced to the 1st defendant.
 4. Failure of 1, 2 and 3 above the honourable court be pleased to strike out with costs the 4th defendant's statement of defence dated 25th June, 2024.



5. Costs of this application be borne by the plaintiff.
2. The application is premised on the grounds inter alia that the 4th defendant has refused and/ or ignored to produce the documents even after having been served with a notice to produce dated 5th July, 2024.
3. The application is supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that the 4th defendant/respondent has failed to heed to the notice to produce dated 5th July, 2024, and time for production has lapsed, and that it is only fair that the 4th defendant/respondent be compelled to produce the documents requested to enable adequate preparation and prosecution. He deposed that failure to do so, the 4th defendant/respondent's statement of defence ought to be struck out with costs.
4. The 4th defendant/respondent filed its response to the application vide the replying affidavit of Samuel Wamaitha sworn on 23rd September, 2024. The 4th defendant/respondent deposed that it attached the securities withdrawal request form dated 21st October, 2021 in its list and bundle of documents dated 7th August, 2024 and that the same was served upon the plaintiff/applicant on 8th August, 2024. Further, that the original copies of the duly executed discharge of charge form was handed over to the 1st defendant with the title documents for registration and the same is not in its custody.
5. The 4th defendant/respondent deposed that there is no need to provide the statement of the loan account for the 1st defendant indicating that it cleared the loan as the securities withdrawal request dated 21st October, 2021 shows that the outstanding balance is nil.
6. The application was canvassed by way of written submissions. The plaintiff/applicant filed his undated written submissions where he raised two issues for determination as follows: -
 - i. Whether the documents are relevant in the instant case.
 - ii. Whether the documents sought are necessary in the circumstances.
7. On the first issue, the plaintiff/applicant submitted that the 4th defendant/respondent in its statement of defence admits that the property was charged, and therefore the duly executed discharge of charge and loan statements of the 1st defendant are relevant and necessary as it will lead to a fair disposal of the suit. Further, that the securities withdrawal request form is an internal bank document which is not a document to file at the land's registry. He further submitted that the title no. Nairobi/Block 19/242 shows that the title is still encumbered by the 4th defendant/respondent as admitted in the 4th defendant's statement of defence, and that the documents sought are aimed for fair disposal of the suit. He submitted that it is within his right to request for the said documents.
8. The 4th defendant/respondent filed its written submissions dated 13th December, 2024 where it was submitted that 2 out of the 3 documents are already in the court record, and that the replying affidavit sworn on 3rd June, 2024 contains a copy of the discharge of charge. Further, it was submitted that the plaintiff/applicant is abusing the court process, and that for this court to grant such orders would be tantamount to issuing such an order in vain. To buttress on this issue, the 4th defendant/respondent relied on the case of *B v Attorney General* [2004] 1 KLR 431.
9. The 4th defendant/respondent further submitted that with regards to the request for production of the statements of the loan account, it is precluded under the law from sharing information of its customers with third parties except in certain limited circumstances as when required by law or to prevent fraud. Further, that confidentiality of information between the bank and a customer is founded on the contract between the bank and the customer. Reliance was placed in the case of *Tournier vs National Provisional & Union Bank of England (1924)* 1 KB 461. Further, it was submitted that there is no need



at all to produce the loan statement as the securities withdrawal request form clearly shows that the loan was repaid and that it is nil.

10. I have considered the application, reply thereof and the written submissions filed by the respective parties. In my view, the issue for determination is whether the application has merit.
11. The instant application appears to have been triggered by the notice to produce dated 5th July, 2024 which the plaintiff/applicant argues that the time to produce the same has lapsed. He averred that the loan account statement, the duly executed discharge of charge and the securities withdrawal request form are relevant and necessary documents for the fair disposal of the suit. On the other hand, the 4th defendant/respondent maintained that two out of the three documents are in the court record and with regard to the loan statement, it was of the view that it contains confidential information between the bank and the customer and unless by an order of the court, the same cannot be produced. The 4th defendant/respondent maintained that it did not see the need to produce the loan account statement as it was clear in the securities withdrawal request form that there is no outstanding balance.
12. Having considered the above, and bearing in mind that it is within the right of the plaintiff/applicant to obtain information which he feels is relevant in the case, it is my finding that merely stating that the said documents are relevant and necessary is not sufficient in the circumstance. The plaintiff/applicant has not informed the court whether it is for inspection or discovery of any new information. Besides, and upon perusal of the court record, the securities withdrawal request form was filed on 7th August, 2024, and the discharge of charge is as contained in the 1st defendant's replying affidavit. I wonder why the plaintiff/ applicant has not sought production of these documents from the 1st defendant as well.
13. In view of the above, I find that the notice of motion dated 19th September, 2024, lacks merit, and it is hereby dismissed. Costs in the cause. Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 20th DAY OF MARCH, 2025.

HON. MBOGO C.G.

JUDGE

20/03/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Dr. Kenyariri for the Plaintiff/Applicant

Mr. Mbaji for the 4th Defendant /Respondent

