



**Credit Reference Bureau Africa Limited T/A Trans Union v Onyango (Civil Case E665 of 2021) [2022] KEHC 12656 (KLR) (Civ) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E665 OF 2021**

**A MSHILA, J**

**JULY 22, 2022**

**BETWEEN**

**CREDIT REFERENCE BUREAU AFRICA LIMITED T/A TRANS  
UNION ..... APPLICANT**

**AND**

**DAVID SILA ONYANGO ..... RESPONDENT**

**RULING**

1. The applicant filed a chamber summons dated February 15, 2022 brought under no specified provisions of law; the application was supported by the grounds on the face of it and by the sworn affidavit of Rosemary Mbugua who sought for orders that;
  - a) The court to enlarge the time through which the defendant/applicant can apply for grant of leave, to issue and serve a third-party notice upon Messrs Sidian Bank Limited.
  - b) The defendant/applicant be granted leave to issue and serve a third-party notice upon Messrs Sidian Bank Limited as per the annexed draft Third Party Notice marked "A".
  - c) Costs of this application be provided for.
2. The defendant/applicant stated that it solely facilitates the sharing of information, concerning non-performing loans and any other negative or positive information, between institutions licensed under the *Banking Act*, cap 488 of the Laws of Kenya.
3. It was the statutory and contractual obligation of the proposed third party to provide accurate information to the applicant. The applicant issued the proposed third party with a notice of dispute on July 5, 2021, indicating that the listing of the plaintiff/respondent on the credit reference bureau was disputed.



4. Despite being served with the notice of dispute, the proposed third party failed, neglected and or refused to respond, hence the applicant deleted the disputed information.
5. It is in the interests of justice that the proposed third party be joined to facilitate the determination of the issue of liability.

### Issues for Determination

6. The court has considered the applicant's application and finds only one issue for determination;
  - a. Whether the court should enlarge time and grant leave to the applicant to issue and serve a third-party notice upon Messrs Sidian Bank Limited?

### Analysis

7. The legal foundation on third party notice is found under order 1 rule 15 of the [Civil Procedure Rules](#), which provides thus: -
  - (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—
    - a. That he is entitled to contribution or indemnity; or
    - b. That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
    - c. That any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the court within fourteen days after the close of pleadings for leave of the court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers *ex parte* supported by affidavit.
8. Under order 1 rule 15 (1) (c) of the rules, for a defendant to apply for leave to issue third party notice, it is important to show that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them.
9. In [Oceanfreight \(EA\) Ltd vs Technomatic Ltd & Another](#) [2010] eKLR, the Court held that; -

“It is, in my opinion professionally expedient that the defendant should seek to enjoin the applicant herein, as a third party. This is because of the perceived connection between the applicant's role in the said contract and the cause of action.

From the several authorities canvassed by counsel on both sides, it emerges, contrary to the applicant's contentions, that joinder of third parties as may be prayed by defendants, is not conceptually linked to contract as such; such joinder may be sought in connection with different causes of action was that, provided only that there exists a basis of liability of the



third party to the defendant; and such a basis of liability can arise by operation of the law, in the light of the applicable facts and circumstances.”,

10. The applicant herein solely facilitates the sharing of information, concerning non-performing loans and any other negative or positive information (through consumer reports) between institutions licensed under the *Banking Act*.
11. It was also the applicant’s case that it entered into a subscriber agreement on August 20, 2020 with the proposed third party Messrs Sidian Bank Limited laying down the rights and obligations of the parties. A copy of the agreement was annexed and marked "RM I".
12. It is this court’s considered view that it was the third party’s obligation to provide accurate information to the applicant, pursuant to regulations 63(3), (4) and (5) of the credit reference bureau regulations, 2020. Therefore, there exists a basis of liability of the third party to the applicant; and such a basis of liability arises by operation of the law and is based on their subscriber agreement.
13. The upshot of the above is that this court is satisfied that the application has merit.

### **Findings And Determination**

14. In the light of the forgoing, this court makes the following findings and determination:-
  - i. This court finds that the application is merited and it is hereby allowed;
  - ii. The time within which the defendant/applicant can apply for leave, to issue and serve a third-party notice upon Messrs Sidian Bank Limited is hereby enlarged by thirty (30) days;
  - iii. The defendant/applicant is hereby granted leave, to issue and serve a third-party notice upon Messrs Sidian Bank Limited as per the annexed draft third party notice marked as "A";
  - iv. The defendant/applicant to bear the costs of this application;
  - v. Mention on August 11, 2022 before the Deputy Registrar for compliance.

Orders Accordingly

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY, 2022.**

**HON. A. MSHILA**

**JUDGE**

In the presence;

Atonga holding brief for Orego for the Plaintiff/Respondent

Janjo holding brief for Jackson Kisinga fpr the defendant/applicant

Mutiso for the Interested Third Party

Lucy-----Court Assistant

