



**Prime Bank Limited v Shah & 4 others (Commercial Case E791 of 2021)  
[2022] KEHC 16083 (KLR) (Commercial and Tax) (30 November 2022) (Directions)**

Neutral citation: [2022] KEHC 16083 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E791 OF 2021  
DO CHEPKWONY, J  
NOVEMBER 30, 2022**

**BETWEEN**

**PRIME BANK LIMITED ..... PLAINTIFF**

**AND**

**HASMUKII RICHAND MULJI SHAH ..... 1<sup>ST</sup> DEFENDANT**

**SANJAY RAICHAND MULJI SHAH ..... 2<sup>ND</sup> DEFENDANT**

**KAVIT HASMUKH RAICHAND SHAH ..... 3<sup>RD</sup> DEFENDANT**

**RAJUL GULLABCHAND LALJI ..... 4<sup>TH</sup> DEFENDANT**

**URMILA RAJUL SHAH ..... 5<sup>TH</sup> DEFENDANT**

**DIRECTIONS**

1. Having listed to counsels for the parties, the born of contention is whether directions should issue with respect to notice of motion dated November 25, 2021 or parties should first be held to the terms of the consent order dated March 15, 2022.
2. I have read through the consent order and what is pending for the defendants to file list of witnesses and bundle of documents are required in the order. According to the plaintiff, unless such documents are filed, the application dated November 25, 2021 should be held in abeyance until then. The court is even sought to dismiss the statement of defence on record unless the list of witnesses and bundle of documents are filed within seven (7) days from the date hereof. The plaintiff further added that it cannot properly respond to the application dated November 25, 2021 unless statements and documents are filed.



3. I have as well read through the said notice of motion dated November 25, 2022. It seeks stay of proceedings herein pending hearing and determination of Milimani Insolvency Cause No E47 of 2020, *Franco Ltd v Prime Bank*. The grounds advanced being that the principal borrower seeks for credit to be given from the amounts recovered from it by the plaintiff bank herein. Therefore, there is the danger of conflict decisions by the court.
4. I will not touch on merits of the application dated November 25, 2022, but in my view an application for stay of proceedings ought to be heard first before confirmation of filing of pleadings or any other pretrial directions. I say so because of the danger of reaching to conflicting decisions by courts of same status on similar subject matter should the court be convinced that the matters are substantially similar upon hearing of stay of proceedings application. In the premises, this court directs that parties first canvass the application dated November 25, 2021 and thereafter a date can be fixed to confirm compliance with Order 11 or filing of any other relevant pleadings as per the consent order.
5. Further, I am not persuaded that the plaintiff will not be in position to respond to the application dated November 25, 2021 unless the witness statement and bundle of documents are filed. I say so because the application is strictly premised on the grounds on its face and in the affidavit sworn in its support but not any witness statement or document not referred in the supporting affidavit. The plaintiff therefore has all it takes to respond to the application.
6. In the premises, and following the above discussion, the following orders do hereby issue:-
  - a. The application date November 25, 2022 be heard prior to confirmation of filing of pleadings in this matter.
  - b. The plaintiff shall be at liberty to file a response to the application within fourteen (14) days from the date hereof. The defendant/applicant can file further affidavits thereof within seven (7) days thereof if need be.
  - c. The application be canvassed by way of written submissions and parties are granted thirty (30) days from the date of service of the replies to application to file and exchange their submissions on a fifteen (15) day basis beginning with the defendant/Applicant.
  - d. The matter to be mentioned on February 8, 2023 to confirm compliance and fixing of a ruling date.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**D. O. CHEPKWONY**

**JUDGE**

**In the presence of:**

Mr. Allen Gichuhi counsel for Plaintiff

M/S Mumbi holding brief for Mr. Anzala counsel for Defendant.

Court Assistant - Ivan

