



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. E053 OF 2019

BETWEEN

BANK OF AFRICA LIMITED.....PLAINTIFF

AND

MORGANITE LIMITED.....1ST DEFENDANT

BARTONJO CHESAINA.....2ND DEFENDANT

ELISHA KIPROP CHIRCHIR.....3RD DEFENDANT

KIPRUTO CHIRCHIR.....4TH DEFENDANT

RULING

1. I have looked and considered the record herein and I find that there are two applications. The Plaintiff filed a Notice of Motion dated 15th July 2020 seeking to strike out the Defence. The Defendants have filed a Notice of Motion dated 19th October 2020 seeking to strike out the Plaintiff.

2. The Plaintiff's case is for money advanced to the 1st defendant and guaranteed by the 2nd, 3rd and 4th Defendants. In their Statement of Defence, the Defendants apart from denying those claims, state that they have been unable to defend themselves on account of failure by the Plaintiff to provide documents to enable them prepare their defence. It is on this basis that the Defendants filed their application to strike out the Plaintiff and resisted the application to strike out the Defence.

3. I do not propose to consider or outline the parties' advocates' recriminations against each regarding the service and exchange of documents save to refer to **section 1A (3) of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** provides as follows:

1A(3) A party to civil proceedings or an advocate for such party is under a duty to assist the court to further the overriding objective of the Act and to that effect, to participate in the processes of the court and to comply with the direction and orders of the court.

4. This is a case where the Advocates have utterly failed in their responsibility to each other and to the court to ensure that litigation is in an expeditious, fair and proportionate manner. The court does not intend to waste its time resolving matters which ought to have been resolved by counsel at the earliest opportunity save to dismiss the Notice of Motion dated 15th July 2020 and the Notice of Motion dated 19th October 2020.

5. I now issue the following directions in order to ensure that this matter is expeditiously dealt with:

(a) The Plaintiff shall serve upon the Defendants its List and Bundle of Documents within 14 days from the date hereof. The documents shall be in soft copy sent by email and filed on the court's online portal. The documents shall be accompanied by an affidavit stating that the Plaintiff has produced all the documents in their power and possession in respect of this suit.

(b) Upon service of the List and Bundle of Documents, the Defendants are granted leave to amend their Statement of Defence which shall be filed and served within 14 days from the date of service and shall be accompanied by their List and Bundle of

Documents accompanied by an affidavit of the Defendants stating that they have produced all the documents in their power and possession in respect of the suit.

(c) Upon 14 days of service of the Statement of Defence, the Plaintiff shall file and serve its Reply to Defence.

(d) The parties shall agree on facts, issues and documents for trial within 14 days of service of the Reply to Defence.

6. Default or failure to comply with any part of these directions shall result in striking out of the respective pleadings.

7. This matter shall be mentioned on a date fixed for directions and further orders.

DATED and DELIVERED at NAIROBI this 15th day of JANUARY 2021.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango.

Mr Gichuhi instructed by Wamae and Allen Advocates for the Plaintiff.

Mr Muga instructed by Prof. Tom Ojienda and Associates Advocates for the Defendants.