



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 133 OF 2019

EUSEBIO ISAAC WACHIRA MUNENE.....PLAINTIFF

VERSUS

NIC BANK LIMITED.....DEFENDANT

RULING

1. The Plaintiff, Eusebio Isaac Wachira Munene, instituted this suit against the Defendant, NIC Bank Ltd, vide the plaint herein dated 20th June, 2019 seeking judgment against the Defendant as follows:

a. General damages for:

i. Unlawful listing under the Credit Reference Bureau.

ii. Malicious closure of the account and subsequent listing at the Credit Reference Bureau.

iii. Embarrassment and emotional anguish suffered

b. Costs

c. Interest on (a) and (b) above

d. Any other or further relief that this Honourable court may deem fit and just to grant.

2. The Plaintiff's contention is that in the year 2015 the Defendant closed the Plaintiff's account without notice for being overdrawn by Ksh.2,000/= being operating charges. That the Plaintiff paid the said charges and indicated to the Defendant of his intentions of not operating the said account. That in the year 2019 the Plaintiff was listed with the Credit Reference Bureau through the Defendant's instructions as a defaulter. That the Defendant was so listed without any notice or being given any opportunity to show cause. The Plaintiff averred that the said listing by the Defendant was activated by malice and that the Plaintiff has suffered damage, embarrassment and emotional anguish.

3. The Defendant filed the Preliminary Objection dated 19th July, 2019 on the following grounds:

1. That the honourable court lacks the jurisdiction to hear the suit in the first instance by dint of the provisions of Regulations 35(5) to 14 of the banking (Credit Reference Bureau) Regulations 2013 enacted pursuant to the Banking Act Cap 458, Laws of Kenya.

2. That the Plaintiff has failed to invoke the procedure laid down in the aforementioned Regulations and the presentation of the suit is premature and unfounded having by-passed statutory remedies enacted under the said Regulations.

3. That the Regulations provide alternative form of dispute resolution recognized under Article 159 of the Constitution of Kenya.

4. That the suit does not lie and should be struck out with costs.

4. The Preliminary Objection was canvassed by way of written submissions. Both parties referred the court to the provisions of Regulation 18 and 35 of the Banking Act (Credit Reference Bureau Regulations) 2013. The Defendant's side submitted that the Plaintiff's suit is premature in view of the existence of the Dispute Resolution Mechanism provided for under the said Regulations. On the other hand, the Plaintiff's counsel essentially submitted that the Preliminary Objection raised did not meet the threshold of the Preliminary Objection.

5. On the issue whether this court has the jurisdiction to entertain the suit herein, it was encapsulated in the case of **The Owners of Motor Vessel "Lillian s" v Caltex Oil Kenya Ltd [1989] KLR 1** thus:-

"Jurisdiction is everything. Without it, a court has no power to make one step, where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction."

6. As stated in the celebrated case of **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors (1969) EA 696**:

"...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

Sir Charles Newbold P. added as follows at page 701:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."

7. Regulation 18 (1) of the Credit Reference Bureau Regulations provides as follows:

"Customer information which shall be exchanged pursuant to these Regulations is any customer information concerning a customer's non-performing loan and any other negative information and may include details specified in sub-regulation(4)."

8. Regulation 35(5) to (14) of the Credit Reference Bureau Regulations provides as follows:

(5)Where the customer believes that the information contained in the database is inaccurate, erroneous or out-dated, the customer may notify the Bureau in writing of the information disputed.

(6)Within five working days of being informed that the information in a customer's credit report is disputed, the Bureau shall-

(a) attach a note to the credit information report, warning that the disputed information is under investigation, which notice shall remain on the file until resolution of the dispute; and

(b) give the institution or credit information provider that supplied the information a notice of dispute requesting confirmation from the institution or credit information provider as to the accuracy of the information.

(7)The Bureau shall, within fourteen days, conduct investigation, based on the relevant information provided by the customer, and may contact any person who has furnished information.

(8) Where an institution or credit information provider receives a notice of dispute from the Bureau it shall, within fourteen days of receiving the notice, complete all necessary investigations into the disputed information and give the Bureau a notice of resolution, advising whether the disputed information is to be deleted, corrected, or remain unchanged.

(9) Where the investigation reveals an error, the Bureau shall remedy the error and inform all persons who may be affected by the information including the customer.

(10) If the Bureau does not complete its investigation within twenty one days, it shall delete the disputed information as requested by the customer.

(11) If the Bureau later completes its investigation, it may reinsert or revise the disputed information based on the results of such investigation and shall inform the customer of the action taken.

(12) Upon receipt of a notice of resolution or an amendment notice from an institution the Bureau shall, within five working days of such receipt, send a notice of change to any subscriber that has in the previous twelve months obtained a credit information report from the Bureau containing the incorrect information.

(13) Where the customer disagrees with the resolution of the disputed information, the customer may request the Bureau to attach a statement of not more than one hundred words to the customer's credit report, setting out the customer's claim that

the information is not accurate and the Bureau shall take reasonable steps to comply with the customer's request.

(14) A Bureau may charge the customer for the costs of its services in conducting an investigation of disputed customer information where the information disputed by the customer turns out to be false.”

9. In the plaint, it is pleaded that the Plaintiff was wrongly listed with the Credit Reference Bureau and that despite the notice of intention to sue having been given, the Defendant has failed to delist the Plaintiff. Under the aforesated Regulation 35(5), the Plaintiff is required to give notice of the wrong information to the Credit Reference Bureau for the Bureau to commence investigations and take steps accordingly. Consequently, I am in agreement with the position taken by the Defendant that the Plaintiff has by passed the procedure provided (see for example **Daniel Gachanja Githaiga v Credit Reference Bureau, Africa Ltd & 2 others [2013] eKLR, Co-operative Bank of Kenya v Peter Ochieng [2018]eKLR** and **Amy Kagendo v Prima Bank Ltd & another [2013]eKLR**).

10. In the upshot, I find the Plaintiff's case is premature and it is hereby struck out with costs.

Date, signed and delivered at Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE