



**Metto v Chase Bank (Kenya) Limited (Environment & Land Case  
137 of 2015) [2023] KEELC 19886 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19886 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 137 OF 2015  
EO OBAGA, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**DANIEL KIPRUTO METTO ..... PLAINTIFF**

**AND**

**CHASE BANK (KENYA) LIMITED ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated March 6, 2023 in which the Decree Holder/Applicant seeks the following orders: -
  1. That this application be certified as urgent and service of the same be dispensed with in the first instance.
  2. That the Defendant (Chase Bank (K) Ltd herein be amended to read Chase Bank (K) Ltd (in liquidation).
  3. That the Decree issued herein be amended to read Kenya Deposit Insurance Corporation (KDIC) the liquidator Chase Bank (K) Ltd pursuant to the order/leave granted vide Eldoret ELC Misc No 06 of 2023.
  4. That costs be in the cause.
2. The Applicant depones that he obtained a decree against the judgement debtor/Respondent after which the Respondent was put under liquidation. He states that he is unable to execute the decree as the Respondent is under liquidation. He therefore states that it is necessary to bring in Kenya Deposit Insurance Corporation (KDIC), the liquidator of the Respondent for purposes of execution of the decree.
3. The Applicant further depones that he obtained orders ex-parte in ELC Misc E006 of 2023 allowing him to commence an action against KDIC and joinder of the same in these proceedings.



4. The party which is sought to be joined in these proceedings opposed the application based on a replying affidavit sworn on April 20, 2023. The principal officer, Bank Resolution of KDIC states that the institution was appointed as a liquidator of the Respondent pursuant to the [Kenya Deposit Insurance Act](#) to carry on the business of the Institution in a manner that it deems necessary and beneficial to the institution. The deponent states that under the Act, KDIC cannot be held to have assumed or incurred any obligation or liability of the institution for its own account.
5. The deponent further states that KDIC cannot be held responsible for actions or omissions and liabilities incurred by the Respondent whether before or after liquidation process. He therefore states that this application has been brought in ignorance of the provisions of the [Kenya Deposit Insurance Act](#) and judicial precedents.
6. The parties herein agreed to have the application disposed of by way of written submissions. The Applicant filed submissions on May 9, 2023. The Respondent filed submissions on May 10, 2023. I have gone through the submissions of the parties herein as well as the application by the Applicant and the opposition thereto by the Respondent. The only issue for determination is whether KDIC as the liquidator is liable for the obligations and liabilities of the Respondent.
7. The law is clear that once KDIC has been appointed as a receiver or liquidator of an institution, it becomes an agent of that institution. The law then protects it from assuming any obligations or liability of the Institution for its own account. Section 45(5) provides as follows: -

“Where the Corporation or the appointed person has assumed control of an institution, the Corporation or the appointed person shall—

- a. be deemed to be acting as the agent of the institution in carrying on the businesses and managing the assets, liabilities and affairs of the institution or in carrying out any transaction relating to the institution or its assets, businesses and affairs, including disposal of assets; and
  - b. not, by reason of having assumed control of the institution or any action taken by it, be held to have assumed or incurred any obligation or liability of the institution for its own account 2012 Kenya Deposit Insurance No 10”
8. The only instance where the corporation can be sued for damages is where any person has sustained losses as a result of any action of the corporation. This is clear from section 46 (2) of the Act.
  9. In the instant case, the Applicant is seeking to join KIDC in these proceedings for purposes of executing the decree arising from the judgement of January 17, 2022. This cannot be allowed in view of the express provisions of [KDI Act](#). This is clear from section 45(5)(b) and section 50(5) of the [KDI Act](#).
  10. In the case of [Atril R Shah & another –VS- Imperial Bank Limited & another](#) (2021) eKLR it was held as follows:-

“The upshot of the foregoing is that, when the 2<sup>nd</sup> Defendant is appointed as receiver of any entity, it acts as an agent of such entity. It assumes no liability such entity at all. Its liability is restricted to damages suffered by any party as a result of its own actions. See Andrew Muma and Charles Kanjama Trading as Muma & Kanjama Advocates & another v others vs Deloitte & Touche East Africa & 5 others (2020) eKLR.

In view of the foregoing, the Plaintiffs claim in the plaint should be directed at the 1<sup>st</sup> Defendant and should not extend to the 2<sup>nd</sup> Defendant. this is so because it relates to the



release of part of the deposit to the insured depositors of the 1<sup>st</sup> Defendant. Although the 2<sup>nd</sup> Defendant may be exercising its powers as a receiver of the 1<sup>st</sup> Defendant, it is not to be held liable for its carrying out that mandate.”

11. From the above analysis, it is clear that KDIC cannot assume liabilities and obligations of the Respondent. Consequently, I find that the Applicant’s application is devoid of any merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Omboto for Plaintiff/Applicant.

Mr. Ranja for Mr. Kundu for Defendant/Respondent

Court Assistant -Laban

**E. O. OBAGA**

**JUDGE**

**21<sup>ST</sup> SEPTEMBER, 2023**

