



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO. 274 OF 2013

WILSON THIRIMBU MWANGI.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

KCB BANK KENYA LTD.....2ND RESPONDENT

RULING

1. Wilson Thirimbu Mwangi, the applicant herein, took out the chamber summons dated 25th March 2013, in which he sought to be paid interest on the sum of ksh.1,550,000/= held by Kenya Commercial Bank, Kikuyu Branch, A/c no. 1002XXXXX. The applicant filed an affidavit and a further affidavit he swore in support of the summons. When served with the summons, the Hon. Attorney General, the 1st respondent, filed grounds of opposition to resist the application while Kenya Commercial Bank Ltd, the 2nd respondent herein, filed the replying affidavit of Velma Okoth to oppose the summons. When the summons came up for interpartes hearing, this court directed parties to file and exchange written submissions.

2. I have considered the grounds stated on the face of the summons plus the facts deponed in the supporting and opposing affidavits. I have further considered the grounds of opposition filed by the 1st respondent and the rival written submissions. It is the submission of the applicant that on 2/3/2000, his bank account no. 1002XXXXX was unprocedurally frozen on the pretext that it was being investigated. The applicant pointed out that one I.P Johnson Libese swore an affidavit vide Nairobi C.M.C.C. no. 736 of 2000 seeking for an order to investigate the applicant's bank account and take copies of the entries.

3. The applicant argued that no evidence was adduced to link him with any offence therefore he is entitled to be paid interest which accrued between 2nd March 2000 and 28th November 2011. He also stated that the order issued was for the account to be only investigated and not to be frozen.

4. The 1st applicant opposed the motion and pointed out that the order to freeze the account dated 2/3/2000 was made through a lawful court order and as such no interest could have been earned when the order was in force.

5. The 1st respondent stated out that the applicant was subsequently charged, prosecuted, convicted and sentenced to death for the offence of murder hence the search and freezing of the applicant's account was merited.

6. It was further argued that the claim of interest was time- barred. The 1st respondent further argued that there was no proper suit to base the summons.

7. The 2nd respondent on its part stated that the account mentioned by the applicant does not exist in its system and therefore it was incumbent upon the applicant adduce credible evidence to show that he held such an account with it. The 2nd respondent also argued that it was not a party to the criminal proceedings i.e Nairobi H.C. CR. C no. 40 of 2000.

8. Having considered the material placed before this court and having considered the rival submissions, it is apparent that a preliminary issue was raised by the 1st respondent. The question is whether there is a proper suit to base the application. The 1st respondent further argued that it is clear that the applicant simply filed a miscellaneous application.

9. With respect, I agree with the submissions of the 1st respondent that the applicant's application is not one of the ways prescribed under Order 3 rule 1 of the Civil Procedure of instituting a suit. Therefore since there is no competent suit before this court the applicant's

application lacks a foundation to stand on. In the case of **Geoffrey Theuri =vs= The Law Society of Kenya (1988) eKLR** it was held *inter alia* that without a suit, the court is devoid of jurisdiction to grant interlocutory orders.

10. In the case of **Joseph Kibowen Chemjor =vs= William Kiseru (2013) eKLR**, it was held *inter alia*, that a claimant should always start an action by way of a plaint unless there is a clear alternative provided by statute or rules thereunder.

11. With respect, I agree with the 1st respondent, that the applicant's summons is incompetently before this court.

12. The second issue which was ably argued is that the summons lacks merit. The 1st respondent has clearly pointed out that the order freezing his account was lawfully obtained. It is clear from the material placed before this court that there was an application to search and freeze the applicant's account with the 2nd respondent therefore no interest could have been earned during the period.

13. There is also no contention that the applicant was tried, convicted and sentenced to suffer death for the offence of murder vide Nairobi H.C. CR. C no. 40 of 2000. I agree that the applicant's account was lawfully searched and frozen. In the circumstances, no interest could have been earned in such an account.

14. The 1st respondent has further stated that the claim for interest is time-barred. It is clear from the summons that the applicant is claiming interest which accrued between 2nd March 2000 and 28th November 2011.

15. The claim on interest should be asserted within a period of 6 years from the date when the cause of action arose. This matter was filed on 25th March 2013. The account was unfrozen on 28.11.2011. I think the cause of action can safely be said to have arisen on the date of defreezing of the account. However, it is a matter which can be subjected to debate and argument. In my view, and in the circumstances of this case it cannot be said that the action is wholly time-barred.

16. The 2nd respondent's main ground in opposing the applicant's application is that the applicant has failed to establish that he held account no.1002XXXXX, Kikuyu Branch. The applicant failed to respond to this challenge. Having failed to controvert the 2nd respondent's assertion, I find that the applicant has failed to establish his claim.

17. In the end, I find the summons to be incompetent and without merit. The same is struck out and dismissed with costs to the respondents.

Dated, Signed and Delivered at Nairobi this 31st day of May, 2019.

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J. K. SERGON

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent