



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL CASE NO. 102 OF 2011

FAIRLANE SUPERMARKETS LIMITED.....PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LIMITED....DEFENDANT

RULING

1. One of the objectives of Pre-Trial Proceedings and Case Management, is to allow parties to have advance knowledge of the Case they are expected to confront. In this way they have opportunity to prepare adequately.

2. Case Management Conference in this matter was held way back on 20th March 2015 and the matter proceeded partly before Gikonyo J. on 2nd July 2015. But as the Honorable Judge left the Station, parties agreed that the matter commences *De Novo*. This Court was in the midst of taking cross-examination of the Plaintiff's second witness when Counsel for the Plaintiff sought Leave of Court to file the Bank Statements which was the basis of the Report the witness was producing. That request was opposed.

3. The witness currently giving evidence is Mr. Wilfred Abincha Unono. He is the Managing Consultant of The Interest Rates Advisory Centre (IRAC) which prides itself in Account Scrutiny and Interest Re-calculation. He was called to give evidence in respect to the Plaintiff's account with the Defendant Bank and has produced a Report in respect thereof.

4. At cross-examination he told Court that,

“This was drawn from the Statement of Accounts”.

This prompted the current application as the Statements were not part of the Report.

5. No doubt, there is merit in the resistance by Counsel for the Defendant that the Plaintiff was required to know the Documents it would be relying on so as to discharge the onus of proving its case. It may also be true that the Defendant has firmed up its Defence on the basis of the Documents it was served. This Court is told that the Documents sought to be filed are aimed at countering what has been raised in cross-examination.

6. The Plaintiff sees the resistance as an attempt by the Defendant to obscure the truth and argues that in any event even the witness for the Bank makes reference to entries made in the Statements.

7. Part of the Plaintiff's case is that the Bank levied illegal charges and interest rates on its Account. This, of course, is denied by the Defendant. Whilst it is true that the Plaintiff ought to have fully prepared its case by the time of the Case Management Conference, it may be difficult for this Court to follow arguments for or against the allegations that the Bank has charged excessive or uncontracted interest or rates without the benefit of looking at the Bank Statements.

8. It is only for this reason that this Court will be willing to accommodate the request by the Plaintiff. The Bank is the custodian of copies of the Statements of the Plaintiff's account and they can provide copies thereof for comparison with what the Plaintiff will be producing.

9. So as to eliminate any risk of prejudice on the part of the Defence, the Defendant shall be entitled to recall either or both witnesses who have testified for further cross-examination.

10. The Application is allowed. Costs in the cause.

Dated, delivered and signed in open Court at Nairobi this 19th day of October 2018.

F. TUIYOTT

JUDGE

Present:-

Muthee for Defendant

Chebet h/b Mbabu for Plaintiff

Nixon-Court Assistant