

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

CIVIL CASE NO.400 OF 2011

JOHN MAINA GITHAIGA

PAUL KIBUNYI MUTIRO

T/A ORIENT TRANSJOPA SAFARIS.....PLAINTIFF

VERSUS

CFC STANBIC BANK LIMITED.....DEFENDANT

RULING

Upon the close of the Defendants case **MR OGUNDE**, Counsel for the Defendant made an application to have a Forensic Audit conducted on the IT System of **STANBIC BANK** (the Defendant herein). Counsel submits that this exercise would be necessary to enable the court determine the issue in question. Mr. Ogunde indicated that his client would be willing to cater for the cost of this forensic audit to be conducted by an independent Systems Analyst.

Mr. GACHUKI for the Plaintiff opposed the application on the grounds that the same had been made too late in the day. He submits that a similar application had been made earlier before **Hon. Lady Justice Olga Sewe**. That the orders sought were granted but no action was taken by the Bank. Counsel submits that this application is nothing but a delaying tactic intended to hold the Plaintiffs hostage.

I have considered the application as well as the reply made on behalf of the Plaintiffs. I have perused the proceedings before **Hon Justice Sewe** but I have not found any point during those proceedings where a similar application was made. The only application which was made before the Hon Judge was an application for an adjournment which was allowed by the court on **13th December 2017**.

The purpose of any hearing is for the court to make its determination on the issue or issues between the parties. In this case the live issues between the parties is the ownership of the monies in question. The court ought not to shut out any evidence which would enable it reach a just determination of the matter in issue between the parties. In my view the Plaintiffs stand to suffer no prejudice if the present application is allowed. Indeed the Plaintiff ought to welcome any measures which may be taken to assist the court to reach a fair and just determination of the case.

Accordingly I do hereby allow the present application. I direct that the Hon. Deputy Registrar identify an independent and impartial Systems Analyst to conduct a forensic audit of Defendants system. The report to be filed within 30 days. Each party is at liberty to apply.

Dated in Nairobi this day of 2018

Ruling delivered in open Court on **21st December 2018**

Delivered in open Court.

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Justice Maureen A. Odero