



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL SUIT NUMBER 17 OF 2014**

**JEDIDAH WANJIRU WAIRIMU. ....PLAINTIFF**

**VERSUS**

**SIMON KAROGHA NJOROGE .....1<sup>ST</sup> DEFENDANT**

**NATIONAL INDUSTRIAL CREDIT**

**BANK LTD.....2<sup>ND</sup> DEFENDANT**

**CREDIT REFERENCE BUREAU.....3<sup>RD</sup> DEFENDANT**

**AFRICAN PROVIDENT LIMITED T/A REAL PEOPLE.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application dated 17<sup>th</sup> March 2014 is brought by the plaintiff. She seeks an order of mandatory injunction to compel the defendants by themselves and their agents to expunge the plaintiffs name from the third Defendants (Credit Reference Bureau) database, and in the alternative certify the main suit urgent and to be heard on priority basis.

2. In her grounds and affidavit in support, the applicant states that there is no basis upon which her name is listed in the third defendants database as she did not owe the second defendant any debt at the time her name was listed, and such listing has continued to cause her financial suffering and loss. The applicant deposes that she has no account with the second defendant nor a loan facility with the said second Defendant. It is her disposition that a third party by name Simon Karogha Njoroge fraudulently used her documents and acquired a loan facility from the first defendant on or about the 23<sup>rd</sup> July 2012 and also to open an account with the said institution. She blames the first defendant for not exercising due diligence and extending a loan to the said Simon Karogha Njoroge that he was unable to pay. For those reasons she seeks an order to compel the third defendant to remove her name from its database.

3. The 3<sup>rd</sup> Defendant, Credit Reference Bureau filed grounds of opposition to the application on the 19<sup>th</sup> June 2014 and raised grounds that there is no allegation of the third Defendant having acted in bad faith towards the plaintiff while discharging its mandate pursuant to Credit Reference Bureau Regulations 2013, and that it is an agent of the Central Bank of Kenya licenced under the Banking Act Chapter 488 Laws of Kenya and therefore not directly liable to actions – performed in good faith. It is further stated that the claim against it is time barred under **Section 31(3)** of the **Banking Act and Regulation 19** of the **Credit Reference Bureau Regulation 2013**.

4. The third defendant submits that it will only remove the applicants name from its database after the forgery allegations against the plaintiff are confirmed or otherwise by a court of law.

The second Respondent, Industrial Credit Bank Limited opposed the application by its Replying Affidavit filed on the 30<sup>th</sup> May 2014 and states that the plaintiff applied for a loan from the second respondent that was granted and disbursed, that the plaintiff defaulted in repayments causing the bank to refer the default to the third defendant in good faith and pursuant to the statutory obligations under the Banking Act to enquire and investigate into the truth of the allegations. To that extent, it was its submissions that the bank only recognises the applicant as its customer and it is not liable for acts committed by the applicant's agents or servants.

5 The court has considered the parties pleadings, application and affidavit evidence by the parties.

The suit subject of the application dated 7<sup>th</sup> March 2014 was instituted by the plaintiff against all the defendants and sought for mandatory injunction against the second defendant and/or its agents to expunge the plaintiffs name from the second defendants database and general damages for losses incurred upon alleged fraudulent dealings by the defendants.

Each of the defendants denied the fraudulent dealings.

6. From the above circumstances linking the Defendants to negligence and loss upon which the plaint and cause of action are based, it would be improper to expunge the applicant's name from the proceedings. Strict proof of the allegations of negligence attributed to defendants, in the courts view, are subject to strict proof, and the only mechanism of such proof is through a full trial when evidence may be adduced to exonerate each party from the allegations of fraud and negligence.

For those reasons, the court finds that the application dated 17<sup>th</sup> March 2014 is unmerited.

7. To speed up the process towards having the case listed for hearing, parties are urged to take the necessary steps to have the case confirmed ready for hearing and determination. Numerous applications no doubt slow down the wheels of justice towards expeditious disposal of cases.

The respondents shall have the costs of the application.

**Dated, signed and delivered in open court this 21<sup>st</sup> day of April 2016**

**JANET MULWA**

**JUDGE**