



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL CASE NO. 115 OF 2011

DR. JAPHETH OGENDO OWUOR:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

STANDARD CHARTERED BANK (K) LIMITED:::::::::::::::::DEFENDANT

RULING

The application before this court is dated the 6th July, 2011 by way of chamber summons under order 20 Rules (1) (3) and (4) of the Civil Procedure Rules and Sections 3, 3A and 63 (e) of the Civil Procedure Act and all enabling provisions of the Law. The Main prayers sought are numbered (a) and (b). Prayer (a) was dispensed with on the 8th July, 2011. Prayer (b) is for:-

an order of inspection of the accounts numbers (i) to (xi) compelling the Branch Manager Standard Chartered Bank to render account and inspection and an audit Report be carried out by the Central Bank and accountant appointed by the applicant.

The application was supported by the affidavit made by Dr. Japeth Ogendo Owuor made on the 6th July, 2011.

The applicant depones that he had opened 4 accounts at the Respondent Bank. His problems started when he fell ill and needed money for treatment. The applicant applied for a loan in the sum of Kshs. 200,000/- on the 27th October, 2005 and depones that the money was never disbursed. Thereafter the applicant states that the Respondent created a total of 15 accounts for repayment of a loan that was never released or disbursed. To date the applicant depones that the Respondent is holding a total sum of Kshs. 2,755,923/90 of the applicants money as lien for a non existing loans.

The application was opposed by counsel for the Respondent who relied on the affidavit of Catherine Kirui made on the 3rd May, 2011.

He was submitted that several preliminary questions have been raised to be tried. The main issues relate to fraud and the loan. Counsel submitted that this matter could not be disposed of summarily through an interlocutory application. The matter needed to proceed to full hearing in order to canvas the issues of fraud and the Loan.

I have heard both counsel for the applicant and counsel for the respondent and have read the supporting affidavit of the applicant and replying affidavit of the Respondent Order 20 Rule 4 of the Civil Procedure Rules provides that:-

“On hearing of the application the court may, unless satisfied that there is some preliminary question to be tried...”

I find that the applicant has raised serious issues pertaining to:-

- (i) Fraud,**
- (ii) The opening of unauthorized accounts, and**
- (iii) The questionable loan, proceeds that were never allegedly disbursed and**
- (iv) The lien of the monies amounting to Kshs. 2,755,923/90.**

The allegations of fraud have to be proved beyond reasonable doubt, which can only be done through adducing of evidence. The Respondents are duty bound to offer an explanation to the Applicant as to the numerous accounts opened, the allegations of fraud, the lien, and whether the loan or loans applied for by the applicant, whether they were granted and whether the loan proceeds were disbursed.

The application before this court is not a simple one to be disposed of by way of affidavits. There are issues that cannot be adjudicated at this interlocutory stage upon affidavit evidence. The issues require full testing by oral evidence, which can only be done at a trial.

I believe that the applicant has a good chance of succeeding at a full trial, however I am unable to grant the orders sought at this juncture. The applicants' application for taking accounts is declined. The same is dismissed.

Costs shall be in the cause.

**DATED AND DELIVERED AT ELDORET
THIS 28TH DAY OF NOVEMBER, 2011**

**A. MSHILA
JUDGE**