



**REPUBLIC OF KENYA**

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

**Civil Case 1 of 2005**

**SALMON NDALO OBEDE ..... PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF KENYA..... DEFENDANT**

**RULING**

The plaintiff/applicant filed a suit against the respondent praying for outstanding dues, benefits and other entitlements amounting to Kshs.4,784,411/- as well as general damages for wrongful termination of employment.

The defendant filed a defence and counterclaim by a notice dated 8<sup>th</sup> April 2005. The plaintiff issued a notice to the defendant to produce the following documents: -

- 1. Power of Attorney granted by the bank to Mr. Salmon Ndalo Obede registered as No.42/1989 at Nakuru Lands Office.**
- 2. Circulated specimen signature ‘A’ of Mr. Obede forwarded by the bank to all local banks and foreign correspondent banks all over the world.**
- 3. Specific internal bank charges vouchers debited to the bank’s profit and loss account in respect of the loss of Kshs.23,618,415.80/-.**
- 4. Board of Directors minutes for 66 months from 3<sup>rd</sup> August, 93 to 12<sup>th</sup> January, 99.**

On 26<sup>th</sup> May 2006, the plaintiff/applicant applied under **Order 10 Rule 11 (2) of the Civil Procedure Rules** for an order directing the defendant to make discovery as per the request. The application is premised on the grounds that the defendant had refused or neglected to make discovery as requested.

Counsel for the applicant argued that the documents requested were necessary for the determination of the case before court and for justice to prevail the defendant who is in custody of these documents should be ordered to produce them.

On the part of the defendant/respondent, the application was opposed. The respondent relied on the affidavit of one **S.O Odiyo** the Branch Manager of National Bank of Kenya, Nakuru. The gist of the matters deposed to in the said affidavit state that the documents requested by the plaintiff are not available as the bank disposes most of its documents after use. As regards the request for a document known as the power of Attorney registered at Nakuru Land’s office, it is stated that it is a public document which the plaintiff can secure on his own. As regards the Board of Directors minutes, the respondent contends that those are confidential documents and they can not be released to the plaintiff. Moreover it was argued that the plaintiff did not state the purpose for which he required those documents.

Under **Order 10 Rule 11 (2)**, the court can order discovery if satisfied that such discovery is necessary for disposing fairly the suit before the court or for saving time. In this case, the plaintiff has not shown how the documents are necessary for the determination of the suit before the court which is essentially a claim for general and special damages for wrongful termination of employment.

Secondly, the documents titled Power of Attorney which is said to be registered as number 42 of 1989 which is in Land's office can easily be assessed by the plaintiff. It is also not clear for what purposes the specimen signature of the plaintiff would be needed for in these proceedings when he is the author of his own signature and can produce another. Similarly it is not clear what would be the likely use of the internal bank charges vouchers and the Board of Directors minutes.

In the premises, I find no merit in this application which I hereby dismissed with costs to the respondents.

**Ruling read and delivered on 16<sup>th</sup> day of March 2007**

**MARTHA KOOME**

**JUDGE**