

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Civil Case 184 of 2000

HIGHLANDS MINERAL WATER COMPANY LIMITED.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....DEFENDANT

RULING

In the chamber summons dated 17th May 2004, the applicant /defendant is applying for orders:

“That the plaintiff be to deliver specific particulars of the claim stated in its pleadings and sought by the defence in the whole of items No. (b) (c) & (d) in the request for particulars dated 18th October 2000.”

The plaintiff is the Respondent in this chamber summons filed following the filing, by the Respondent, of a plaint which states in paragraph 1, the main part, that:

“The plaintiffs claim against the defendant is for the sum of ksh. 7, 588, 615/57 being the money due and owing in respect of interest overcharged to the plaintiffs company by the Defendant Bank at Nyeri during the period from 1991 to 1998, facts whereof are well within the Defendant’s Bank knowledge. The plaintiff will further aver that there is no other suit filed anywhere in the Republic against the Defendant Bank for the same claim or similar claim. The plaintiff will also claim interest at 36%.”

Although the applicant filed a defence to that plaint, the applicant had also sent a formal request to the respondent to supply further and better particulars and that request was dated 18th October 2000 set out in sub-paragraphs (a), (b), (c) and (d). The Respondent replied on 17th April 2001. There is no need to reproduce the said request and reply thereof since the parties have them.

The reality of the matter is that while the reply dated 17th April 2001 gave particulars for request (a), the reply did not give particulars for requests (b), (c) and (d). Hence this chamber summons which is opposed on the basis that the particulars sought are either evidence or are within the knowledge of the applicant.

I have carefully considered what was brought to my attention during the hearing of the chamber summons and have no hesitation to state that the applicant’s application is genuine and what the Respondent is saying cannot stand. The applicant is a large Commercial Bank dealing with many and varied customers in varying transactions and particulars in the plaint as set out in the passage quoted above cannot be accepted as sufficient to the applicant. If the Respondent is relying on terms in a contract, I do not see it reasonable for the Respondent urging that it cannot reveal that contract to the Applicant at this stage because that contract is evidence or is within the knowledge of the Applicant. If the Respondent’s claim is based on truth, let the Respondent be open with its truth as there is and ought to be no need for ambushing, the applicant. Is the Respondent fearing an early settlement of the dispute ? If so why ?

As in my view the Applicant’s application is genuine and in the interest of justice the Respondent is not entitled to revert to technicalities like delay or change of advocates to defeat the Applicant’s request, the Chamber Summons dated 17th May 2004 be and is hereby granted as prayed.

DATED AND DELIVERED ON THE 23RD OF FEBRUARY, 2006.

J. M. KHAMONI

JUDGE