

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 505 of 2003

NATIONAL HOSPITAL INSURANCE FUND BOARD OF MANAGEMENT.....
.....PLAINTIFF

VERSUS

THE DEPOSIT PROTECTION FUND BOARD

(as liquidators of Euro Bank Limited in Liquidation) & 4 OTHERS.....
DEFENDANTS

R U L I N G

The 5th defendant has moved this court under Order X Rule 11 (2) of the Civil Procedure Rules seeking the following prayer: -

“That the plaintiff/respondent does within fourteen (14) days make discovery on oath of all the documents which are or have been in its possession or power relating to all matters in question in the suit.”

The 5th defendant made a request for discovery under oath and the plaintiff failed to comply within that period of request that is within the 14 days stated by the 5th defendant. 5th defendant submitted that the plaintiff’s claim related to banking transaction, which occurred in they year 2000. 5th defendant counsel submitted that it is likely that the plaintiff does intend to produce large volume of documents. He said that it has been three years since close of pleadings and accordingly discovery was not premature.

The application was opposed. Plaintiff submitted to order discovery, as sought, is at the discretion of the court. Plaintiff also said that the application for discovery was premature because of multiplicity of interlocutory applications pending before court. One filed by 1st and 2nd defendant seeking for striking out of the suit as against them. Another filed by the 4th seeking particulars. Plaintiff said that these applications will impact plaintiff’s suit depending on their outcome. Plaintiff finally said that it was not refusing to make discovery but that discovery ought to await the conclusion of those outstanding applications.

I am of the view that submissions of the plaintiff ‘**hold water**’. Although the general rule is that discovery ought to be made to ensure fair disposal of a suit and/or for saving costs, discovery ought to be when all the preliminary matters having been concluded, particularly where the preliminary matters have a bearing on the documents to be relied upon.

The hearing and determination of the application of 1st and 2nd defendant may indeed impact the plaintiff’s case in a certain way. To order discovery at this stage may not assist, if the plaintiff, as a consequence of that impact decides to change its pleadings.

The court indeed finds the 5th defendant’s application dated 5th May 2006, ought to await the disposal of interlocutory applications, pending, hereof. The order of the court therefore is that, that application be and is hereby adjourned, to await disposal of those application. There shall be no orders as to costs.

Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered this 20th July 2006.

MARY KASANGO

JUDGE