



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**Civil Case 507 of 2005**

**KENYA COMMERCIAL BANK LIMITED .....PLAINTIFF**

**VERSUS**

**TITUS KILONZO MUTUA**

**T/A MBWALA AGENCIES .....1<sup>ST</sup> DEFENDANT**

**HELLEN NGINA KAATINE .....2<sup>ND</sup> DEFENDANT**

**MWALA AGRO SUPPLIES LTD. ....3<sup>RD</sup> DEFENDANT**

**GLADYCE LANGAT .....4<sup>TH</sup> DEFENDANT**

**CHRIS A. ABELE**

**T/A ABELE & CO. ADVOCATES .....5<sup>TH</sup> DEFENDANT**

**ERIC MUTISYA MUSYOKI .....6<sup>TH</sup> DEFENDANT**

**JOSHUA IKATAI KIMEU .....7<sup>TH</sup> DEFENDANT**

**PAUL MUTHOKA MBOLE .....8<sup>TH</sup> DEFENDANT**

**DAVIS MAINA MAHINDA .....9<sup>TH</sup> DEFENDANT**

**CYRUS N. MBUGUA .....10<sup>TH</sup> DEFENDANT**

**PRADIP KUMAR VASANT BHAI PATEL .....11<sup>TH</sup> DEFENDANT**

**MOHINI HARDWARE LTD. ....12<sup>TH</sup> DEFENDANT**

**CO-OPERATIVE BANK OF KENYA LTD. ....13<sup>TH</sup> DEFENDANT**

**BARCLAYS BANK OF KENYA LTD. ....14<sup>TH</sup> DEFENDANT**

STANBIC BANK KENYA LTD. ....15<sup>TH</sup> DEFENDANT

AFRICAN BANKING CORPORATION LTD. ....16<sup>TH</sup> DEFENDANT

STANDARD CHARTERED BANK KENYA LTD.....17<sup>TH</sup> DEFENDANT

### RULING

In an omnibus application of the 16.9.2005 the Applicant seeks order against the various Respondents herein for injunctive relief. The application in so far as the 11<sup>th</sup> and 12<sup>th</sup> Respondents are concerned was heard first. The order sought against the 11<sup>th</sup> and 12<sup>th</sup> Respondents is in prayer 13 of the application which seeks the following order:-

***“13a) THAT pending the hearing and determination of this suit, this Honourable court be pleased to issue a temporary injunction restraining the 4<sup>th</sup>, 5<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants and their respective agents from dealing or gaining access to their accounts held with the Plaintiff as follows:-***

<b><i>Defendant/ Account holder</i></b>	<b><i>Branch</i></b>	<b><i>Account number</i></b>
<b><i>4<sup>th</sup> Defendant</i></b>	<b><i>Tom Mboya</i></b>	<b><i>010-135357376</i></b>
<b><i>Gladyce Langat</i></b>	<b><i>Street</i></b>	
<b><i>5<sup>th</sup> Defendant</i></b>	<b><i>City Centre</i></b>	<b><i>240506379</i></b>
<b><i>Chris A. Abele</i></b>		
<b><i>11<sup>th</sup> Defendant</i></b>	<b><i>Kitengela</i></b>	<b><i>297760620</i></b>
<b><i>Pradip Kumar Vasant</i></b>		
<b><i>Bhai Patel</i></b>		
<b><i>12<sup>th</sup> Defendant -</i></b>	<b><i>Kitengela</i></b>	<b><i>297501313</i></b>
<b><i>Mohini Hardware Ltd.”.</i></b>		

I am not at this stage dealing with the orders sought against the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

The application is based on the grounds set out in the application and the supporting affidavits of Samuel Okero Ikonyi and Paul K. Kisorio.

It is the Applicant’s contention that one of its employees, Titus Kilonzo Mutua, the 1<sup>st</sup> Defendant so manipulated the monies lying to the general credit of the Applicant in an account number 8990000890 by means of electronic transfers that he credited the accounts of the 11<sup>th</sup> and 12<sup>th</sup> Respondents with funds which did not belong to them and as such the Applicant wishes these funds to be frozen until the matters in issue in this suit are disposed off.

The particular sums which the Applicant says are wrongly credited to the Accounts of the 11<sup>th</sup> and 12<sup>th</sup> Respondents appear at page 170 of the annexures to the affidavit of Paul K. Kisorio and are as follows:-

### **11<sup>th</sup> Respondent's account:**

6.5.05 Kshs.310,000/= credited to Account No.32297760620

10.5.05 Kshs. 610,000 credited to Account No.32297760620

10.5.06 Kshs.1,600,000 credited to Account No.32297760620

25.5.05 Kshs.600,000 credited to Account No.32297760620

Total Kshs. 3,220,000.00

Additionally a sum of shs.700,000/= being the Kenya Shillings equivalent of US\$8883-42 is referred to, I will deal with this sum later.

These sums are reflected in the Bank Statement of the 11<sup>th</sup> Respondent annexed to a further Supporting Affidavit sworn by Samuel Okero Ikonyi on the 3.11.2005 in sheet Numbers 56 and 63.

### **12<sup>th</sup> Respondent's Account:**

6.05.2005 - Kshs.300,000/= Credited to account No.32297750313.

This credit appears on sheet No.27 of the 12<sup>th</sup> Respondent's Account.

How the sums came from the Applicant's funds is shown at page 298, 212, 218 and 231 of annexure of PKK 1.

The sum of Kshs.700,000/= in respect of a Bankers Order for US\$8883-24 is shown at page 218 and shows the beneficiary to be Mukund Bhai Parsottam Bhai Patel.

In response to the allegations, the Respondents relied on the affidavit of the 11<sup>th</sup> Defendant sworn on the 4.10.2005 in which he stated he was the proprietor of the 11<sup>th</sup> Respondent. It was his case that the 1<sup>st</sup> Defendant bought a huge consignment of goods from the 11<sup>th</sup> and 12<sup>th</sup> Defendants and used to deposit money. If the goods he wanted were not available he would ask for a refund.

He further stated he always banked cash and cheques in his Kitengela account and held funds in excess of Kshs.1 million.

The question here, however, is not what other monies the 11<sup>th</sup> and 12<sup>th</sup> Respondents received but if they have given a satisfactory explanation as to the Misc. credits made into their respective accounts.

With regard to the Bankers order for US\$ 8883.24 the 11<sup>th</sup> Respondent in paragraph 6 of his affidavit claims he deposited Kshs.8883.24 by cash in return for which, they, I presume the Applicant gave a Bankers cheque in dollars. This cannot be right as Kshs.8883.24 is not the equivalent of US\$8883.24. He relied on his exhibit PKD. However, this is a request to the Applicant to remit a sum of US\$8883.24 to Mukund Bhai Parsottam Bhai Patel who he says is his mother. The remission does not show that the 11<sup>th</sup> Respondent paid a sum of Kshs.700,000/= in cash. Indeed it is clear this sum came from the Applicant's general funds.

It is not for me to say whether the 11<sup>th</sup> and 12<sup>th</sup> Respondents will be able to establish that the funds they received by way of miscellaneous credits were paid to them by the 1<sup>st</sup> Defendant for goods delivered. However, there is nothing to show on the statements that these sums came from the 1<sup>st</sup> Defendant nor is there any evidence by way of receipts that he was paid cash in respect of goods not taken. Nor any monies showing what goods if any were taken.

I am entitled to make the order asked for if I am satisfied that the Applicant has made out a prima facie case with a probability of success. On the evidence before me I am so satisfied. It is apparent that funds have been taken from the Applicant's General Funds and transferred to the account of the 11<sup>th</sup> and 12<sup>th</sup> Respondents. This in itself is an unusual transaction and it is suspicious to say the least that the 1<sup>st</sup> Defendant who worked for the Applicant, is the one for his benefit according to the 11<sup>th</sup> Respondent the funds were received by him.

This also applies to the Bankers order for which the 11<sup>th</sup> Respondent has shown no evidence what was paid for it. Indeed it was paid for from the General Funds of the Applicant.

In the result I grant the orders sought for. Costs will be in the cause.

Dated and delivered in Nairobi this 21<sup>st</sup> day of October, 2005.

**P. J. RANSLEY**

**JUDGE**