



**George Nganga Mbua t/a Mbugua Nganga & Co. Advocates
v Co-operative Bank of Kenya (Petition E003 of 2023)
[2025] KEHC 3144 (KLR) (Commercial and Tax) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
PETITION E003 OF 2023
PM MULWA, J
MARCH 13, 2025**

BETWEEN

**GEORGE NGANGA MBUA T/A MBUGUA NGANGA & CO.
ADVOCATES PETITIONER**

AND

CO-OPERATIVE BANK OF KENYA RESPONDENT

JUDGMENT

1. The Petitioner herein filed a Petition dated 27th November 2023 seeking the following reliefs:
 - a. A declaration that the unlawful and arbitrary seizure, appropriation, and/or conversion of the Petitioner's lawfully earned and owned Kshs. 10 million held in Cooperative Bank Account No. 0113XXXXXXXX1100 violated the Petitioner's right to property under Article 40 of *the Constitution* of Kenya.
 - b. A declaration that the failure by the Respondent to give the Petitioner any reasons for the seizure, appropriation, and/or conversion of his funds violates the Petitioner's right to fair administrative action under Article 47 of *the Constitution*.
 - c. A declaration that the failure by the Respondent to give the Petitioner any notice of the very adverse action of reversing funds lawfully held in the account to Murang'a County Government violated his rights to fair administrative action under Article 47 of *the Constitution*.



- d. A declaration that the failure of the Respondent to give the Petitioner an opportunity to be heard before the very adverse action of reversing the money held in his account further violated not only the Petitioner's right to fair administrative action but also his natural justice rights.
 - e. A declaration that the actions of the Respondent amount to unreasonableness.
 - f. An order of mandamus to compel the Respondent to immediately pay Kshs. 10 million into the Petitioner's account and grant the Petitioner immediate and unrestricted access to the funds.
 - g. An order prohibiting the Respondent from unlawfully seizing, converting, and/or appropriating funds in the Petitioner's account, and interfering with the Petitioner's operations of the account.
 - h. General and aggravated damages for violation of the Petitioner's constitutional rights.
 - i. Interest on Kshs. 10 million at the rate of 14% from 18th October 2023 until payment in full.
 - j. Interest on damages awarded under prayer (h) above.
 - k. Costs of the suit.
 - l. Any other relief that this court may deem fit and just to grant.
2. The gist of the Petition, as set out, is that the Petitioner has been banking with the Respondent for over 10 years. In his capacity as an advocate, the Petitioner represented the Murang'a County Government in a suit filed against it by Red Bricks Enterprises Limited in Murang'a High Court Civil Suit No. E001 of 2021. The Petitioner discharged his duty and obtained a judgment in favor of his client, the Murang'a County Government. After presenting his fee note, the client partially paid the legal fees amounting to Kshs. 10 million on 17th October 2023 through the Petitioner's Co-operative Bank Account No. 0113XXXXXX1100. Upon request by the Respondent, the Petitioner provided supporting documents regarding the transaction between himself and the Murang'a County Government. Despite this, the Respondent unlawfully reversed the funds to the Murang'a County Government without providing the Petitioner any explanation for the same.
 3. The Petitioner avers that the actions of the Respondent were irrational and unreasonable, and urges the Court to grant the reliefs sought in this Petition.
 4. The Respondent has opposed the Petition through a replying affidavit sworn on 31st January 2024 by Lawrence Karanja, its Legal Manager. In the affidavit, Mr. Karanja deposed that the Bank was under an obligation to inquire into the source of funds received in the Petitioner's account, in compliance with the Prevention of Crimes and Anti-Money Laundering Act (POCAMLA) and the regulations and guidelines made thereunder. He further avers that the Petitioner submitted a copy of the fee note, decree, and payment voucher, which were deemed insufficient to verify the legitimacy of the large amount of funds received. The Bank resolved to reverse the funds on the grounds that the Petitioner had failed to provide a copy of the signed letter of engagement, a document considered essential for confirming the transaction's authenticity.
 5. Mr. Karanja argues that the Bank acted reasonably, diligently, and in good faith when it reversed the funds, asserting that the Bank did not appropriate the Petitioner's funds as alleged. He denies the allegations made by the Petitioner and contends that the reliefs sought by the Petitioner are untenable.
 6. The Petition was heard by way of written submissions, and counsel for both parties highlighted their respective submissions before the Court.



7. Upon careful review of the petition, supporting affidavit and submissions by counsel, the primary issue for determination is whether the petition filed by the Petitioner is merited.
8. It is well established that financial institutions, including the Respondent, are under a legal obligation to comply with anti-money laundering laws, notably the Prevention of Crimes and Anti-Money Laundering Act, 2009 (POCAML). The purpose of such legislation is to prevent the financial system from being used to facilitate money laundering and other criminal activities. It is an undisputed fact that the Respondent acted within its regulatory obligations when it sought to investigate the source of the funds deposited into the Petitioner's account.
9. In the present case, the Petitioner's account was credited with a substantial amount of Kshs. 10 million from the Murang'a County government. The Respondent requested the Petitioner to provide documentation supporting the source of funds. The Petitioner submitted a copy of the fee note, decree and payment voucher claiming that the funds were for legal fees.
10. I have perused the documents attached and a copy of a ruling, and the same do not conclusively establish the contractual relationship or the legitimacy of the payment.
11. The bank requested the Petitioner to provide a signed engagement letter which it failed to do so. the Petitioner bore the burden of proving the legitimacy of the funds. The failure to provide this key document, without any reasonable explanation, leaves the Respondent in a position where it could not fully verify the authenticity of the transaction.
12. There was nothing hard for the Petitioner to adduce a copy of the signed engagement letter which would have allowed for a more informed decision. There was no explanation adduced for the failure to provide the engagement letter.
13. Consequently, I find the Respondent's decision to reverse the funds, after a reasonable request for supporting documentation, was a proportionate response to ensure compliance with POCAML.
14. The Petitioner argues that the Respondent's actions violated his constitutional rights, including the right to property under Article 40 of *the Constitution* and the right to fair administrative action under Article 47.
15. The right to property under Article 40 of *the Constitution* is not absolute and may be limited by the need to protect the public interest, including the fight against money laundering and the prevention of financial crimes. The Bank's actions were taken not to deprive the Petitioner of his lawful property, but to ensure that the funds did not come from illicit sources.
16. The law is clear that where administrative action is likely to affect the legal rights of a person, the administrator should give notice of the proposed action. The actions of the Respondent were administrative and in line with the POCAML as the refund of the money from the Petitioner's account was likely to affect his constitutional rights. The Respondent urged the Petitioner to furnish it with sufficient evidence to support the transaction.
17. I associate myself with the sentiments of the court in *Robert Kamau Mbugua v Absa Bank PLC & Anor; Sidian Bank Ltd (interested party)* (2021) eKLR where the court held:

“As has already been established, the Petitioner has not demonstrated that the respondents froze his bank accounts hence denying him access to his property. However, although it may be a regular practice for banks to recall funds upon receiving a recall request, the banks are still bound by the law and in particular the law on fair administrative action. In this case the respondents informed the Petitioner immediately after taking the adverse action. It is



unreasonable to expect a bank to alert a customer that it is about to recall funds from his account where the customer is suspected of being involved in fraudulent activities. This kind of information can only be divulged after the action has been taken.”

18. The Respondent’s decision to reverse the funds, although they may appear harsh to the Petitioner, was not arbitrary but was driven by its need to comply with legal requirements under the POCAMLA and its internal policies designed to prevent money laundering. The Respondent acted based on the information it had available and took reasonable steps to ensure the legitimacy of the funds.
19. The Petitioner has also sought damages for the alleged violation of his constitutional rights. However, as outlined in *Securicor Courier (K) Ltd v Benson David Onyango & another* [2008] eKLR, general damages are not typically awarded for breach of contract, and in this case, the Petitioner has not demonstrated that he is entitled to such damages. Having found that the Respondent’s actions were justified and necessary to comply with the law, there is no basis for awarding damages in this instance.
20. In light of the above analysis, I find that the reliefs sought by the Petitioner are unfounded. The Bank acted in accordance with its legal obligations, and its actions were necessary to ensure compliance with the law. The Petitioner cannot claim that his constitutional rights were violated simply because the Bank exercised its due diligence to ensure that the funds were legitimate.
21. In conclusion I find that the Bank’s actions were reasonable, and there was no violation of the Petitioner’s constitutional rights. It follows this petition fails in its entirety and is dismissed. Each party to bear their own costs.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Kamau h/b for Mr. Khaemba for Petitioner

Mr. Wanga for Respondent

Court Assistant: Carlos

