



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ethics and Anti-Corruption Commission v Kidero & 13 others (Anti-Corruption and Economic Crimes Civil Suit E008 of 2021) [2025] KEHC 4900 (KLR)
(Anti-Corruption and Economic Crimes) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4900 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

ANTI-CORRUPTION AND ECONOMIC CRIMES

ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E008 OF 2021

LM NJUGUNA, J

APRIL 23, 2025

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

DR EVANS KIDERO 1ST DEFENDANT
PAUL MUTUNGA MUTUNGI 2ND DEFENDANT
JOHN NDIRANGU KARIUKI 3RD DEFENDANT
GEORGE WAINAINA NJOGU 4TH DEFENDANT
THE CUPS LIMITED 5TH DEFENDANT
JOHN NGARI WAINAINA 6TH DEFENDANT
ADUMA JOSHUA OWUOR 7TH DEFENDANT
HANNAH MUTHOMI KARIUKI 8TH DEFENDANT
PHILOMENA KAVINYA NZUKI 9TH DEFENDANT
NG'ANG'A MUNGAI NG'ANG'A 10TH DEFENDANT
EKAYA ALUMASI GHONZOUR 11TH DEFENDANT
JAMES MIMI MBUGUA 12TH DEFENDANT
ELIZABETH WANJIRU NDERITU 13TH DEFENDANT
ALICE NJERI MUNDIA 14TH DEFENDANT



RULING

1. This ruling relates to an objection that was raised by the counsel for 1st Defendant when this matter came up in court on the 3rd day of April, 2025. The objection was with regard to the production of bank statements by PW12, Mulki Umar, who is the Plaintiff's Investigating Officer.
2. In support of the objection, counsel for the 1st Defendant argued that PW12 (herein referred to as the witness) is not the maker of the bank statement. That though the witness obtained warrants to investigate the 1st defendant's account, the warrants only allowed her to inspect and get copies under Section 180 of the *Evidence Act* and that if the Plaintiff seeks to rely on the bank statements, the same can only be produced by a bank official. Reliance was placed on the case of *Robert Obwocha vs. Bernard Kiplagat Rotich & another* (Criminal Case Number 120/2019).
3. Counsel for the Plaintiff sought time to respond to the objection and the court directed her to do so, by way of written submissions and granted leave to the counsel for the 1st defendant to file her submissions in rejoinder which directions, both counsel complied with.
4. It was the Plaintiff's submission that, contrary to the 1st Defendant's allegation, it had laid sufficient basis for the production of the bankers' books by its investigating officer, and that once a basis has been laid, a banker need not attend court as they are not compellable witnesses.
5. On the part of the Plaintiff, it was submitted that in the course of the trial, the Plaintiff's investigating officer demonstrated that it had lawfully procured the bank books relating to this case. That the witness testified that the Plaintiff filed several Miscellaneous Applications seeking to obtain warrants to investigate bank accounts and pursuant to those applications, the Magistrates' courts issued warrants to
6. investigate the accounts. Further, that it was upon execution of the warrants that the banks furnished the Plaintiff with account opening forms, bank statements, mandate cards, deposit slips and relevant bankers' books in compliance with the court Orders.
7. Counsel relied on Sections 140 and 178 of the *Evidence Act*, and submitted that there must be a special cause for the court to compel the production of banker's books by a bank official. Counsel urged that these provisions protect banks from undue burdens in legal proceedings where they are not directly involved.
8. The Plaintiff contended that where bankers' books have been lawfully procured and the chain of custody is not broken, there is no prejudice in the production of the same by the investigating officer. Further, that the 1st Defendant in his witness statement at paragraph 42 of his bundle of documents, admits receiving Ksh. 14,400,000 from Cups Limited.
9. The Plaintiff avers that in the absence of any dispute as to the receipt of the money, the 1st defendant has not demonstrated special cause requiring the court to compel the attendance of the bank official to produce the bank statements. Reliance was placed on ACEC Revision Application No. E009 of 2022 (*Evans Kidero Vs. Director of public prosecutions*) in which this court upheld the decision of the Magistrate's court in ACC No. 32 of 2018 *Republic Vs. Evans Kidero*, dismissing objection by the 1st defendant to production of bank statements by the Plaintiff's investigating officer.
10. In rejoinder, the 1st defendant submitted that the Plaintiff bears the burden of proof under Sections 107 and 109 of the *Evidence Act* to prove its case. Reliance was placed on Sections 140, 177 and 178 of the *Evidence Act* and he argued that the issue at hand is how and by whom the bankers' books, may



be received in evidence which, in his submission, is established under Section 177 of the *Evidence Act*. That Sections 140 and 178 of the *Evidence Act* are therefore of no aid to the Plaintiff who would have to comply with the requirement of establishing special cause if the Plaintiff desired to rely upon and produce banker's books. The 1st defendant made reference to an earlier decision by this court which was delivered on the 26th March 2025, and to the case of *Guardian Bank Limited vs. Skyflyres Travel and Tours Limited* (2004) eKLR.

11. The court has considered the objection and the submissions that have been made in support of, and in opposition to the same. The issue for determination is whether PW12, the investigating officer can produce bank statements or whether the same should be produced by a bank official.
12. This court delivered a ruling on the 26th of March, 2025 when counsel for the 1st defendant raised an objection on production of Certificate of electronic evidence which the Plaintiff had sought to produce through the same witness. In its ruling the court dwelt at length on the provisions of Sections 140, 176 and 177 of the *Evidence Act*. Section 140 provides: -
 - “ 1) A bank, or officer of a bank, shall not, in any legal proceedings to which the bank is not a party, be compelled to produce any banker's book the contents of which can be proved under the provisions of Chapter VII.
 - 2) No bank, or officer of a bank, shall be summoned or called as a witness to prove any matters, transactions or accounts recorded in a banker's book except by order of a judge or magistrate made for special cause.”
13. Section 176 is on the mode of proof of entries in banker's books and it provides: -

“Subject to the provisions of this Chapter of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as a prima facie evidence of such entry, and of the matters, transaction and accounts therein recorded.”
14. Section 177 which is on proof and verification of a copy sets out the conditions precedent before a copy of an entry in a banker's book can be received in evidence under Section 176. It provides: -
 - “(1) A copy of an entry in a banker's book shall not be received in evidence under section 176 of this Act unless it be first proved that-
 - a. The book was, at the time of making the entry, one of the ordinary books of the bank; and
 - b. The book is in the custody and control of the bank; and
 - c. The entry was made in the usual and ordinary course of banking business; and
 - d. The copy has been examined with the original entry, and it is correct
 2. Such proof may be given by an officer of the bank, or, in the case of the proof required under paragraph (d) of subsection (1), by the person who has performed the examination, and may be given either orally or by an affidavit sworn before a commissioner for oaths or a person authorized to take affidavits.”



15. The documents sought to be produced herein are bank statements. PW12 was the investigating officer in this case and there is evidence on record that the Plaintiff obtained warrants to investigate bank accounts and the same were furnished to her by the banks. As the investigating officer, it is my considered view that she should be allowed to produce the statements under Section 177(2).
16. I think it is important for this court to point out that for purposes of production, a distinction needs to be made between production of entries in bank's books and a Certificate of electronic evidence under Section 106(B). The documents sought to be produced here are bank statements. Under Section 176, such documents shall in all legal proceedings be received in evidence as prima facie evidence of such entry. However, in the case of certificate of electronic evidence, the same can either be produced by the maker or the person who performed the examination and this in my view may be an investigating officer in which case, he can do so through an affidavit sworn by the person who made the certificate. The absence of such an affidavit was the reason why this court allowed the objection in its earlier ruling.
17. In my considered view, the proof required under Section 177 (2) is by the person who has performed the examination and may be given either orally or by an affidavit sworn before a commissioner. As the investigating officer, PW12 investigated the accounts and she was furnished with the bank slips and the relevant banker's books. She must have interacted with the documents in the course of the investigations and therefore, she can produce them.
18. As submitted by the Plaintiff, and in line with Section 140 of the *Evidence Act*, there must be a special cause for the court to compel the production of banker's books by a bank official. These provisions protect banks from undue burdens in legal proceedings where they are not directly involved. Where bank books have been lawfully procured and the chain of command is not broken, there is no prejudice in the production of the same by the investigating officer. In any event, the 1st Defendant in his statement has admitted having received the money. He has not disputed any entry in the bank statement that is in issue.
19. In view of the foregoing, I find that the objection has no merits and I hereby dismiss the same.
20. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 23RD DAY OF APRIL 2025.

.....

L.M. NJUGUNA

JUDGE

In the presence of:-

Miss Mwashuruti holding brief for Miss Wambugu for the Plaintiff

Miss Soweto for the 1st defendant appearing with Miss Misiati

Court assistant –Aden

