



**Afroplast Industries Limited v Sanlam Insurance Co Ltd (Civil Suit
11 of 2019) [2025] KEHC 11551 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 11551 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 11 OF 2019
DO CHEPKWONY, J
MAY 23, 2025**

BETWEEN

AFROPLAST INDUSTRIES LIMITED PLAINTIFF

AND

SANLAM INSURANCE CO LTD DEFENDANT

RULING

1. In a Ruling delivered on 13th July, 2023, this court directed the Plaintiff to produce the documents listed in the Notice to Produce dated 17th April, 2023 being:-
 - a. The Lease Agreement for the premises where the factory is alleged to have been located at Go-down Number 15 situated in Plot Number 13/520 along Kibiko road in Thika.
 - b. The proof of purchase by the Plaintiff and/or receipts for the machinery, office furniture and equipment, stock, raw materials allegedly valued at Kshs. 204,367,000 as at 23rd March, 2018.
 - c. Proof of loss of income of Kshs. 24 million for 8 months and costs for the Expert Assessors from China of Kshs. 300,000/=.
 - d. The court proceedings in Thika Criminal Case No.6065 of 2018.
2. When the matter came up for mention on 27th November, 2023 for parties to confirm compliance and Pre-trial directions, the Defendant's Counsel informed the court that the Plaintiff has yet to fully comply with the Notice to Produce documents as the documents they had availed to them were not the ones they had requested for. The Defendant went on to explain that it had requested for the Lease Agreement for the suit premises where the alleged fire took place and what had been availed to then was a Letter of Offer between another Company and the Landlord (Josmera Co Ltd) which the Defendant contends is not a party in the suit.



3. The Defendant also stated that it had requested for proof of purchase of the office furniture and equipment which were valued at Kshs. 204,367,000/= and what was availed were annual reports and financial statements together with Auditor's Report allegedly for the period of 30th October, 2018 which the Defendant holds is not proof of purchase. The Defendant stated that since the amount claimed is a colossal sum, it needs proof of the same. It also holds that the Plaintiff ought to avail clearing and forwarding documents, Letters of Credit duty (excise), KEBS Certifications to show the goods were genuinely imported and they owe them.
4. The Defendant further submitted that the Plaintiff did not provide proof of loss of income of Kshs. 24,000,000/= for eight (8) months and have provided an invoice for payment of flights from the Chinese yet it wants the value of what was manufactured or the sales made for the period less the expenses to show loss of income. Lastly the Defendant indicated that it required the proceedings of Thika Cr. Case No. 6065 of 2018 but what was availed was only a Charge Sheet which it holds it is not sufficient proof to stage of trial proceedings in a case.
5. In response, the Plaintiff's counsel stated that it wrote a letter dated 21st September, 2023 addressed to court and copied to the Defendant explaining that they had complied with the Notice to Produce the documents to the best of their ability and was of the view that some of the issues that have been raised by counsel for the Defendant could not be addressed during trial.
6. With respect to the Lease Agreement, counsel for the Plaintiff holds that it is not in dispute that the Plaintiff was occupying the premises at the time of the fire incident and it can provide a witness during trial to confirm that it was occupying the said premises. On the receipts for the goods and machinery, counsel avers that they were all burnt down and urged the court to take judicial notice that before an Insurance Company issues a Policy, it will always have ascertained the existence of the goods being insured and they must be having such documents as part of their due diligence. On the part of loss of income, counsel for the Plaintiff confirms that it filed financial statements, which in the event of any issue, the same can be addressed during trial.
7. On the purchase of the flight tickets, counsel explained that at the time of the fire, some Chinese personnel's travelled to come assess the machinery that had burnt down. On the request for compliance documents from KRA, he stated that the Defendant's Counsel does not represent the said KRA who he contends are not part of the suit and as such it is his view that the Defendant's counsel he is trying to introduce new matters for determination by the court. With respect to the proceedings in the Thika criminal case matter, counsel for the Plaintiff argues the court in Thika could not issue typed proceedings to the Plaintiff as he is not part of the case and thus could only be supplied with the Charge Sheet which confirms the existence of a case. For those reasons, the Plaintiff's counsel maintains that it has complied with the Notice to Produce to the best of its ability and if there is an issue with any of the documents then during trial the court could be moved to expunge them.
8. In rejoinder, the Defendant responded by arguing that its defence in the matter is that the entire case is fraudulent and that is why it needs all the documents to be availed.

Analysis and Determination

9. Having listened to the arguments by counsel for the parties herein, the issue for determination is whether or not the Plaintiff has complied with the Notice to Produce documents as requested by the Defendant, and if not whether the suit can proceed for hearing and the issue of the documents canvassed during trial.



10. It is trite that the purpose of discovery is to ensure all documents needed are availed to the parties and the court for a just determination of a suit. This is the position as was stated in the case of ABN Amro Bank NV –vs- Kenya Pipeline Company Ltd [2019] eKLR as follows: -

“The purpose of discovery is mainly to ensure that all documents or information necessary for the just determination of the suit are made available to the parties as well as the Court.”

11. From a reading of Order 10 Rule 20 of the Civil Procedure Rules, it is clear that where a party fails to comply with the Notice to produce then the suit is prone to dismissal as was stated by the court in the case of Antony W. Lubano & Another –vs- John Kamau (2011) eKLR where the High Court held that:-

“Order 10 Rule 20, provides that any party who fails to comply with an order to answer to interrogatories or for discovery or inspection of documents shall be liable to dismissal of the suit in case it is the Plaintiff or the defence struck out if it is the Defendant”

12. In the instant case, it is clear and as admitted by the Plaintiff that it was not able to produce the exact documents as requested but instead has provided alternative documents which the Defendant holds are not sufficient hence the Plaintiff has failed to comply with the orders of the court.

13. To determine this issue, the court has considered the documents requested for in the Notice to Produce and the ones allegedly availed. The court has taken judicial notice of what prompted the cause of action in the case. It is not in dispute that the cause of action arose due to a fire which burnt down the premises, and thus it is possible that some of these documents could have been burnt down then and cannot be availed.

14. In view of this, the Court therefore deems the Plaintiff as having complied with the court orders under the prevailing circumstances. And in the event that some or any of these documents are not valid or baseless to the case, then this is an issue that would best be canvassed during the hearing for the court to determine the authenticity or viability of the same.

15. For the aforesaid reasons, the Court directs that:-

- a. The main suit be and is hereby fixed for hearing on 15th October, 2025.
- b. Notice to issue upon the Plaintiff and or his counsel.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF MAY 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Buluma holding brief for Mr. Mbanda counsel for Plaintiff

M/S Ivy Mouti for 2nd Defendant

Court Assistant - Martin

