



Baseline Logistics & Investment Company Limited & another v Chase Bank Limited (In Liquidation) & 3 others (Commercial Case E264 of 2024) [2025] KEHC 13193 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E264 OF 2024
JWW MONG'ARE, J
SEPTEMBER 25, 2025**

BETWEEN

**BASELINE LOGISTICS & INVESTMENT COMPANY LIMITED 1ST PLAINTIFF
JOEL KAMAU KIBE 2ND PLAINTIFF**

AND

**CHASE BANK LIMITED (IN LIQUIDATION) 1ST DEFENDANT
KENYA DEPOSIT INSURANCE CORPORATION 2ND DEFENDANT
CENTRAL BANK OF KENYA 3RD DEFENDANT
SBM BANK LIMITED 4TH DEFENDANT**

RULING

Introduction & Background

1. Before the court for determination is the Plaintiffs' Notice of Notice of Motion dated 25th September 2024 where they seek the following orders:-
 1. Spent
 2. That the 2nd Defendant do produce an oath on the following documents
 - a. The Deed for transfer of certain assets and the assumption of certain liabilities dated 17th April 2018 between Chase Bank (Kenya Limited (In Receivership) and SBM Bank (Kenya) Limited, mentioned in the Kenya Gazette, under Gazette Notice No. 6833.



- b. The Kenya Deposit Insurance Corporation Limited Board of Directors resolution passed on 9th April 2018 and 11th May 2018.
 - c. The instrument of transfer of assets and liabilities between Chase Bank (Kenya) Limited (In Receivership) and SBM Bank (Kenya) Limited.
 - d. The Statement of affairs of Chase Bank Limited (under Liquidation within the meaning espoused by Regulation 100 and 101 of the Insolvency Regulations 2016 for every six-month period with effect from the date of liquidation to date.
3. The Plaintiff be at liberty to inspect and peruse the documents sought to be produced.
 4. That the First and Second Defendant liquidator do account for the following;
 - a. The amount realized and received from the sale of Chase Bank Limited to the 4th Defendant within 30 days from the making of the order.
 - b. The amount realized and received from the sale of Genghis Capital Limited or the shares of Chase Bank Limited therein to the current owners.
 - c. The sale of subsidiary companies and/or the shares of Chase Bank Limited therein to wit;
 - i. Genghis Capital
 - ii. Chase Assurance Limited
 - iii. Winton's Capital Limited
 - iv. Rafiki Microfinance Bank Limited
 - d. The assets held by the following special purpose vehicles (SPV) Companies that were admittedly owned by Chase Bank Limited.
 - i. Nine fifty Limited
 - ii. The lighthouse Company Limited
 - iii. French Property Holdings Limited
 - iv. Seventy-Four Investments Limited
 5. That pending hearing and determination of the Petition herein, this Honorable court be pleased to order to account for the following property previously held by SPVS belonging to the First Defendant.
 1. L.R No. 4580/20 - Riverside (shamba 1)
 2. L.R No. 4580/18 - Riverside (Shamba 2)
 3. L.R No. 209/7572 - Riverside (1-way 1)
 4. L.R No. 209/7570/1 -Riverside (1-way 2)
 5. L.R No. 209/7570/2 – Riverside(1-way-3)
 6. L.R No. 3734/205- Jacaranda
 7. LR. No. 337/441 – 4762- Mlolongo



8. L.R No. 3734/975- 1-way Sisters
 9. L.R No. 30449- Watermark
 10. L.R No. 12408/4 – Mathatani
 11. L.R No. 29271: 7B1- Garden City Apartment
 12. Opera Grand- Dubai Burjkhalifa
 13. L.R No. 170867 (LR No. 3734/1409) - Nairobi.
 14. IR No. 88874(LR No. 12498/4, Original No. 12498/2/2- West of Machakos Municipality
 15. IR No. 63714 (LR No.209/7570/1, Original No. 187650) – Nairobi
 16. IR No. 63715 (LR No. 209/7570/2, Original No. 187651) – Nairobi
 17. Title No. Noonkopir Township/223-Ino. Friends Property holdings
 18. Title No. Kwale/Diani Complex/718- INO. Nine Fifty Limited
 19. Title No.Kwale/Diani Complex/719 – INO. Nine Fifty Limited
 20. Title No. Kwale/Diani complex /720 INO. Nine Fifty Limited
 21. CR 22741 (LR NO. 1956/796- Land Survey Plan No. 160353) Voi Township, Taita Taveta INO. Beatrice Mkanyika Mwambili
 22. CR 61385 (LR No. 235807)- Voi Municipality, Taita District- INO. Khamis Chome Abdi
 23. LR No. 29271 (Apartment No. 7B1,7&8 Floors- Block B, Park View Complex, “Garden City Village”) GC Residential Ltd. (Lessor) To Riverside Mews Ltd (Lease)
 24. IR No. 175678 (LR No. 209/21567, Original No. 209/7572) City of Nairobi
 25. IR No. 175678 (Parcel No. 209/21567) County of Nairobi
6. That pending hearing and determination of the suit the Court do issue an order directing the 1st, 2nd and 4th Respondents to render current accounts and an inventory of all the remaining assets currently held and/or charged/mortgaged to the First Defendant.
 7. That costs of and occasioned by this application be provided for.
2. This application is supported by grounds set out on its face and the supporting affidavit of the 2nd Plaintiff(“Kibe”) sworn on 25th September 2024. It is opposed by the 1st and 2nd Defendants (“Chase Bank” and “KDIC”) through the replying affidavit of KDIC’s Chief Executive Officer, Hellen Chepkwony sworn on 28th October 2024 and by the 4th Defendant (“SBM Bank”) through the Grounds of Opposition dated 4th October 2024 and the replying affidavit of its Legal Manager, Kevin Kimani sworn on 9th October 2024. The parties have supplemented their arguments by filing written submissions which together with the pleadings I have considered and I will be making relevant references to the same in my analysis and determination below.



Analysis and Determination

3. Before delving into the substance of the application, I note that Chase Bank and KDIC submit that the Plaintiffs did not exhaust all statutory prescribed mechanisms for redress provided for under section 23(1) and (2) of the [Access to Information Act](#)(Chapter 7M of the Laws of Kenya) before approaching the court. The said provision provides as follows:

23. Powers of the Commission

- (1) In the performance of its functions under this Act, the Commission shall have the power to—
 - (a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;
 - (b) question any person in respect of any subject matter under investigation before the Commission; and
 - (c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.
- (2) The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order—
 - (a) the release of any information withheld unlawfully;
 - (b) a recommendation for the payment of compensation; or
 - (c) any other lawful remedy or redress. (Underline mine)

4. From the above, whereas it is correct that the Commission has power to order for the disclosure and release of information, this power can only be exercised and is applicable if a matter is under investigation by the Commission. The Plaintiffs have not lodged any complaint with the Commission and my reading of the entire [Access to Information Act](#) reveals no obligation for a person to file such a complaint with the Commission before approaching the court. In any event, I am in agreement with the Plaintiffs' submission that the court is clothed with the requisite jurisdiction under inter alia section 22(a) of the [Civil Procedure Act](#) to issue orders for discovery, inspection and production and that this jurisdiction is not ousted by the [Access to Information Act](#). The said provision provides as follows:

Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

- a. make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence

I therefore find that this court has the requisite jurisdiction to issue the production orders sought by the Plaintiffs.



5. Turning to the merits of the application, in *Concord Insurance Co. Ltd v NIC Bank Ltd* [2013] KEHC 3571 (KLR) the late Havelock J., outlined the general principles governing discovery as follows:

“According to Black’s Law Dictionary, 7th Edition, discovery is defined as;

“The disclosure by the defendant of facts, titles, documents, or other things which are in his exclusive knowledge or possession, and which are necessary to the party seeking the discovery as a part of a cause or action pending or to be brought in another court, or as evidence of his rights or title in such proceeding”.
(Underlining mine).

It follows that in an application for discovery; a party has to ensure that the documents sought are “necessary” to the cause of action before or pending trial before the Court. It has to be a disclosure of relevant facts to the matters in issue. According to Halsbury’s Laws of England, Volume 13 para 1, the learned authors detail;

“The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.”

Discovery is therefore limited solely to the matter in contention. The Court, in exercise of its discretion to issue such orders as to discovery, will be guided by the relevance of the documents that the applicant seeks, in relation to the pleadings. The authors in Halsbury’s (supra) at para 38 write:

“Relevance must be tested by the pleadings and particulars and when particulars have been served which limit a particular issue then discovery on that issue is limited to the matter raised in the particulars.”

6. The Plaintiffs have sought the documents and accounts as set out in the prayers of its application that I have reproduced in the introductory part. They have deponed that the Defendants have failed to account for their deposits and several assets belonging to Chase Bank and that they have also failed to recover assets worth Kshs. 7.5 billion that were admittedly owned by Chase Bank through Special Purpose Vehicles (SPVs). The Plaintiffs further contend that there has been continued disposal of properties without accounting or payment to depositors which action will rob them of their hard-earned investments, that the Defendants have failed to render accounts and/or records of the recoveries made from various Chargors and that they have been continually collecting money from debtors of Chase Bank without providing proper accounts to the Plaintiffs and other depositors.
7. In response, the Defendants aver that the information sought by the Plaintiffs contravenes section 6(1)(d) and (e) of the [Access to Information Act](#) and that the liquidation of Chase Bank and payment of deposits is subject to the mandatory provisions of the [Kenya Deposit Insurance Act](#) which inter alia prohibits preferential treatment of depositors as sought by the Plaintiffs. They contend that the Plaintiffs are not entitled to confidential information relating to third parties in the circumstances of this case. The Defendants also deny that Chase Bank was sold to SBM Bank as contended by the



Plaintiffs and that all deposits held and assumed by SBM Bank from Chase Bank have been fully settled and made available to the Plaintiffs.

8. Going through the application, the responses and the submissions, I am inclined to agree with the Defendants that the information being sought by the Plaintiffs cannot be released or produced to them for a number of reasons. First, this court (Kasango J.) in *Chase Bank (Kenya) Limited Employee Ownership Plan & another v Kenya Deposit Insurance Corporation & 4 others* [2020] KEHC 6008 (KLR) has since held that the transaction agreement between SBM Bank and Chase Bank had a confidential clause which forbade its disclosure to other parties not party to the agreement. The court similarly found that the 3rd Defendant (CBK) and KDIC from time to time made publications, to the public, of the steps being undertaken in respect to the receivership of Chase Bank and that this information was also available in their website. Further, that apart from those publications they also engaged the public in meetings and that the press releases gave sufficient information to any party involved with Chase Bank, such as the petitioners therein. In line with the dicta in *Wakhungu & 2 others v Republic* [2024] KECA 1426 (KLR), a determination on the issue of the SBM transaction and the disclosure of documents therein has been made by a court of concurrent jurisdiction and that decision is final and cannot be revisited by this court.
9. Second, I find that there is no evidence that Chase Bank was sold to SBM Bank and I take judicial notice that as per the Gazette Notice No. 6833, KDIC, under the powers donated to it by section 6 (f) and 50 of the KDI Act passed, through its Board of Directors, a resolution on 9th April 2018 and 11th May 2018 approving the transfer of certain assets and liabilities to SBM Bank. By their joint Press Release dated 17th April 2018, CBK and KDIC informed depositors of Chase Bank that the 75% of the value of deposits had been transferred to SBM Bank. There is also no evidence that Chase Bank sold the entities Genghis Capital Limited, Chase Assurance Limited, Winstons Capital and Rafiki Microfinance Limited. Thus, no information can be given by the Defendants about their “sale” because it did not happen.
10. Third, on the assets held by the SPVs, Chase Bank and KDIC have set out in their deposition the position of properties held by the said entities including preservation orders issued by the court in HCCOMM Case No. 159 of 2017. In any case, I agree that those SPVs are distinct and separate entities from Chase Bank and there is no evidence that it is a shareholder in any of the said entities. Thus, Chase Bank and the other Defendants cannot be compelled to give information about those SPVs or the properties being held by them as they evidently do not have them (see *Rafiki Microfinance Bank Ltd v Zenith Pharmaceuticals Ltd* [2016] KEHC 6627(KLR) and *Imperial Bank Kenya Limited (Under Receivership) v Janco Investments Limited & 10 others* [2019] KEHC 12274 (KLR))
11. Fourth, on the failure by the Defendants to file a status report on the liquidation of Chase Bank under the provisions of the *Insolvency Act*, KDIC has rightly deponed that it is only obligated to file such reports as per the KDI Act which law takes precedence over all others in matters relating to the purpose of the KDI Act. KDIC is therefore not required to file documents with the Companies Registry as stipulated under section 489(1) of the *Insolvency Act*.
12. Fifth and lastly, the Defendants cannot be compelled to render current accounts and an inventory of all the remaining assets currently held and/or charged/mortgaged to Chase Bank as this information relates to third parties and it would be a violation of their rights to privacy and breach of duty by Chase Bank and KDIC to divulge such customer information (see *Charles Onyango Anguka & Cleophas Obonyo t/a Jopiju Electrical & General Works v Equity Bank Limited*; *Elisha Ochieng Ombere t/a Jupiju Electrical Services Contractor (Third Party)* [2020] KEHC 7883 (KLR))



Conclusion and Disposition

13. It is for the above reasons that I find no merit in the Plaintiffs' application dated 25th September 2024 and the same is dismissed with costs to 1st, 2nd and 4th Defendants.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025

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J.W.W. MONGARE

JUDGE

In the presence of

1. Ms. Wacuka holding brief for Mr. Wachira for the Plaintiff/ Applicant.
2. Ms. Sifunjo holding brief for Ms. Lubano for the 1st and 2nd Defendant.
3. Mr. Chege for the 4th Respondent.
4. Ms. Mbiro holding for Ms. Mburu for the 3rd Respondent.
5. Amos - Court Assistant

