



**Qwetu Distributors Limited v Central Bank of Kenya (Petition E131 of 2023)
[2024] KEHC 12112 (KLR) (Constitutional and Human Rights) (4 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E131 OF 2023

EC MWITA, J

OCTOBER 4, 2024

BETWEEN

QWETU DISTRIBUTORS LIMITED PETITIONER

AND

CENTRAL BANK OF KENYA RESPONDENT

JUDGMENT

1. The petitioner filed this petition against the respondent claiming violation of its rights and fundamental freedoms. The petitioner argued that the Central Bank of Kenya Prudential Guidelines for Institutions licensed banks under the [Banking Act \(Prudential Guidelines\)](#), 2013, set out guidelines on consumer protection.
2. The petitioner asserted that on 22nd March 2019 it sent a complaint to the respondent regarding a hire purchase facility the petitioner had obtained from NIC Bank (now NCBA Bank) to purchase a motor vehicle. The hire purchase facility was, however, cancelled without the petitioner's knowledge or notice.
3. according to the petitioner, on 17th May 2019, the respondent wrote to the petitioner advising that it (respondent) had engaged NIC Bank on the complaint and relayed in brief the NIC bank's position. The respondent further asked the petitioner to engage NIC bank for an amicable settlement of the matter.
4. stated that it wrote back to the respondent on 20th May 2019, restating its initial complaint and requested for feedback on its concerns that NIC bank had acted contrary to the prudential guidelines.
5. Subsequently, on 17th July 2019, the petitioner, the respondent and NIC bank held a meeting at the respondent's offices. In that meeting, NIC Bank was directed to have a meeting with the petitioner



on 24th July 2019 at 10.30 am. After this meeting NIC bank sent a formal response and bundle of documents and a rejoinder to the petitioner.

6. it is the petitioner's case that on 31st January 2020, the respondent again urged the petitioner to seek an amicable settlement of the matter with the NIC bank. Not giving up, on 22nd February 2020, the petitioner wrote to NIC bank seeking to solve the matter amicably. However, on 26th February 2020, NIC bank indicated that it was not possible to settle the matter amicably. This necessitated another letter on 3rd March 2020 from the petitioner to the respondent seeking for a determination over the matter, but without success.
7. In the meantime, on 1st March 2022, the advocates for NIC bank wrote to the petitioner demanding for the shortfall together with accrued interests. On receiving the letter, the petitioner escalated the matter to the respondent's Governor requesting intervention towards resolution of the complaint.
8. On 28th March 2022, the respondent advised the petitioner that they would engage the Bank further and appraise it. On 14th December 2022, the petitioner received another demand from NIC bank for the shortfall with interest. NIC bank further stated that the complaint had already been settled by the respondent.
9. On the same day, the petitioner wrote to the respondent requesting for a comprehensive decision, but in vain. This necessitated the petitioner to send a demand letter dated 26th January 2023 through its advocates which did not elicit a response.
10. On 5th March 2023, the petitioner filed a complaint against the respondent at the Office of the Ombudsman. On 16th March, 2023 the respondent advised the petitioner to follow up the matter with NCBA bank for appropriate resolution of the specific matters and litigation, if appropriate.
11. It is the petitioner's case that by failing to pronounce itself on the complaint, the respondent violated its legitimate expectation and its rights under Articles 27, 46 and 47 of the [Constitution](#).
12. The petitioner maintained that section 31 of the [Banking Act](#) mandates the respondent to closely monitor and or micromanage rogue banking institutions. The respondent was; therefore, duty bound to interrogate the complaint and pronounce itself by either giving NIC bank advice generally or writing to the petitioner that the NIC bank had done nothing wrong.
13. According to the petitioner, Guideline 3.4.2 (ii) requires consumers to contact the respondent if a consumer considers that a bank has failed to comply with its regulatory requirements. There is no mention of specific matters that should not be brought before the respondent.
14. The petitioner reiterates that the respondent's failure to give a determination on its complaint whether or not NIC bank violated the prudential guidelines or not, violates its rights under Articles 27, 46 and 47 of the [Constitution](#).
15. The petitioner therefore sought a declaration that the respondent's refusal to pronounce itself on whether or not NIC bank had adhered to or violated the prudential guidelines on consumer protection in how it dealt with the petitioner as a customer is an infringement and affront to the [Constitution](#) and an infringement of the petitioner's rights under Articles 27, 46(1) (c) and 47 (1) of the [Constitution](#). The petitioner further seeks an order directing the respondent to render to the petitioner a decision on his complaint dated 22nd March 2019.



Respondent's case

16. The respondent opposes the petition through a replying affidavit and written submissions. The respondent's case is that although section 4A (1)(c) and (d) of the *Central Bank of Kenya Act* (the Act) mandates it to carry out a supervisory and regulatory role over banking institutions, this mandate does not include micromanaging the day-to-day operations of the institutions with their customers on routine banking operations.
17. The respondent further states that the guidelines issued pursuant to sections 57(1) of the *Act* and section 33 (4) of the *Banking Act* are comprehensive and sufficiently protect customers over banking services.
18. It is the respondent's position, that it engaged NIC bank on the petitioner's complaint within its mandate. It did not refuse to pronounce itself on the issue as alleged. The respondent further states that it has always responded to the petitioner's concerns as evidenced by letters dated 17th May 2019; 31st January 2020 and 16th March 2023.
19. The respondent refutes the petitioner's claim that it violated the *Constitution* or the petitioner's rights and fundamental freedoms. The respondent adds that the petitioner is at liberty to pursue NIC bank for any violation of its alleged constitutional rights.
20. The respondent maintains that it acted on the petitioner's complaint and responded appropriately. According to the respondent, analysis of the complaint and the response it received from NIC bank revealed that the dispute was contractual. It was on that basis that it advised the petitioner to engage NIC bank for an amicable settlement.
21. The respondent took the view, that owing to the nature of the dispute, it was not obligated to make a determination on whether or not NIC bank had breached the prudential guidelines on consumer protection. The respondent relies on the decisions in *Karanja v Family Bank Limited & another* [2023] KEHC 2215 (KLR) and *George Ragui Karanja (Suing as Director of Interactive Advertising Limited) v Central Bank of Kenya; Equity Bank Kenya Limited (Interested Party)* [2021] eKLR.
22. The respondent denies violating the petitioner's rights guaranteed under Articles 47, 46 and 27 of the *Constitution*.

Determination

23. I have considered the petition, the response and submissions by parties. The question for determination is whether the respondent failed to pronounce itself regarding the petitioner's complaint and whether as a result, the respondent violated the petitioner's rights and fundamental freedoms (consumer rights).
24. The facts of this petition are not in dispute. They are well captured in the pleadings of the parties. The petitioner entered into a hire purchase arrangement with NIC bank on 29th August 2016 for purchase of motor vehicle registration No. KCH 581Z (Isuzu Lorry) for Kshs. 3,967,000. The petitioner states that NIC Bank later cancelled the facility without the petitioner's knowledge. The petitioner filed a complaint with the respondent asking the respondent to intervene in exercise of its mandate under the guidelines. The petitioner states that the respondent did not deal with the complaint and never issued a determination over the matter.
25. The respondent argues that it corresponded with the NIC bank and found that the issue was contractual and informed the petitioner accordingly. The respondent maintains that the issue the



petitioner was raising was more of internal contractual matter that it (respondent) could not handle as it would amount to micromanaging a banking institution.

26. I have read the pleadings and arguments by parties. I have also read the complaint the petitioner sent to the respondent. In the complaint, the petitioner stated that due to harsh economic conditions, the facility fell into arrears. NIC bank repossessed and sold the vehicle in a manner that breached “all laws, including the Constitution.”
27. In the complaint the petitioner raised a number of issues including; changing the mode of communication to gain advantage over the petitioner in violation of guideline 3.3.1 (b) which requires an institution dealing with a consumer to confirm its address or means of communication and preferences of communication; that the bank sold the vehicle in a manner that was not transparent; charging default interest at 30% which was not disclosed in the letter of offer; listing the petitioner in the CRB for the shortfall after selling the vehicle; and harassment contrary to guideline 3.2.1(c) which prohibits an institution from engaging in an unfair, deceptive, oppressive or aggressive practices such as threatening, intimidating being violent towards client , being abusive; non responsive or humiliating the consumer.
28. In its letter dated 17th May 2019, the respondent wrote to the petitioner in response to the petitioner’s letter dated 22nd March 2019. The respondent informed the petitioner that after engaging NIC bank, NIC bank had indicated to the respondent the facts of the dispute. According to NIC bank, the loan fell into arrears leading to the repossession and sale of the vehicle at Kshs. 3,00,000 on 24th November 2017 after the sale was advertised. The proceeds of sale were not enough to offset the loan amount and interest. This left a balance of Kshs. 3,795, 699.22. In the end, the respondent stated:

“ in this regard, kindly engage the bank to resolve the matter amicably.”
29. On receiving the respondent’s letter, the petitioner again wrote letter dated 20th May 2017. The petitioner pointed out, among other issues, that the hire purchase agreement did not mention 30% interest.
30. Of fundamental importance to this petition, is the respondent’s letter dated 31st March 2020 responding to the petitioner’s letter dated 20th January 2020. The respondent states that there had been a meeting between the petitioner, the respondent and NIC bank on 17th July 2019. The respondent then states:

We have received comprehensive feedback from NIC Bank (now NCBA Bank) on your complaint and the bank alleged that they followed due process in handling your concern and that they have provided all the necessary documentation to support their position. Kindly liaise with NCBA Bank to solve the matter amicably.
31. There was further exchange of letters between the parties over the issue, including a copy of letter from NIC bank which stated that due process was followed in the repossession and sale of the vehicle, NCBA maintained that it was amenable to a settlement proposal from the petitioner on the outstanding amount.



32. Finally, the respondent sent letter dated 16th March 2023 to the petitioner’s advocates informing the Advocates that having engaged NCBA, the bank indicated that it had comprehensively responded to all issues raised by the petitioner. The respondent then stated;

In this regard, CBK advises that your client follows up with NCBA Bank Kenya PLC for appropriate resolution of the specific matters, and if considered appropriate, litigate the matter in court.

33. Flowing from this communication, can the petitioner maintain that the respondent did not determine the complaint? The answer must be in the negative. First, in the letter dated 31st March 2020, the respondent informed the petitioner that, having received comprehensive feedback from NIC bank on the complaint, in which the bank stated that it followed due process in handling the petitioner’s concern and provided all the necessary documentation to support their position, the respondent asked the petitioner to liaise with the bank to amicably resolve the matter.

34. The petitioner not being satisfied, sent more correspondence to the respondent. The respondent sent letter dated 16th March 2023 to the petitioner’s advocates advising the petitioner’s advocates that;

“their client should follow up with NCBA Bank Kenya PLC for appropriate resolution of the specific matters, and if considered appropriate, litigate the matter in court.”

35. This letter, in my respectful view, was a determination over the complaint. The respondent advised that the petitioner should follow up the matter with the bank or take legal action. The respondent’s determination did not have to be in the manner the petitioner desired. A reading of that letter, shows that the respondent made a decision, advising the petitioner what to do in order to resolve the matter. That letter could not be anything, but a determination of the issue the petitioner had raised with the respondent.

36. I must point out that the petitioner’s complaint raised issues that were more legal than administrative. For instance, the issue of 30% interest; the claim that repossession and sale of the vehicle was unprocedural and the concern that the bank’s conduct violated the law and the Constitution were beyond the mandate of the respondent. The moment one alleges that the other party has violated the Constitution, such a claim like in the context of the matters the petitioner was raising, fell outside the administrative mandate of the respondent.

37. Having considered the petition, arguments by parties and taking into account the issues raised in this petition, I am not persuaded that the petitioner has satisfied the threshold that the respondent violated the its rights and fundamental freedoms guaranteed in Articles 27, 46, 47 and 27 of the Constitution.

38. Article 27 prohibits any form of discrimination. The petitioner argued that the respondent had dealt with a similar complaint and made a determination, but did not make a determination on its complaint thus, treated the petitioner differently. It is true that the Constitution prohibits any form of differential treatment. However, my independent review of this matter and the communication exchanged between the parties regarding the complaint, I see no differential treatment. The fact of the matter remains that the respondent addressed the petitioner’s complaint, including holding a meeting between the respondent, petitioner’s officer(s) and those of NIC bank, thus, addressed the petitioner’s concerns.

39. Regarding Article 46, I do not see any violation to this Article that would render the respondent liable for breach of the guidelines in so far as consumer rights are concerned. The issue the petitioner raised was over hire purchase contract and if the bank breached the terms of that agreement, that



was a contractual issue that would, as the respondent correctly advised, be resolved in court through litigation.

40. Similarly, the petitioner has not shown how the respondent violated the tenets of article 47. article 47 confers on every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

The petitioner's own annexures show that the respondent attended to its complaint. The petitioner has not accused the respondent of delay in responding to the complaint; that the action taken by the respondent was not efficient; that it was not lawful, reasonable and or procedurally fair.

41. It is clear from the record, that the respondent attended to the complaint raised and gave the petitioner advise. In fact, the respondent advised the petitioner to

“ follows up with NCBA Bank Kenya Plc for appropriate resolution of the specific matters, and if considered appropriate, litigate the matter in court.”

There could be no clear determination over the matter than this precise advice.

42. In the circumstances, I am unable to see any violation of the Constitution or any of the petitioner's rights and fundamental freedoms guaranteed by the Constitution.
43. Consequently, and for the above reasons, the conclusion I come to, is that there is no merit in this petition. It is declined and dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF OCTOBER 2024

E C MWITA

JUDGE

