



**TRV Towers Limited v Bank of India (Miscellaneous Civil Application E920 of 2023)  
[2024] KEHC 12927 (KLR) (Commercial and Tax) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12927 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E920 OF 2023  
JWW MONG'ARE, J  
OCTOBER 25, 2024**

**BETWEEN**

**TRV TOWERS LIMITED ..... APPLICANT**

**AND**

**BANK OF INDIA ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the Applicant's Notice of Motion dated 25<sup>th</sup> October 2023 made under Order 51 Rule 1 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act (Chapter 21 of the Laws of Kenya), The Banking Act (Chapter 488 of the Laws of Kenya) and Article 35 of the Constitution where it seeks the following orders:
  - a. Spent
  - b. That this court issues an order compelling the Respondent to produce the documents listed below that are in their custody for auditing:
    - i. Bank account operating mandate forms
    - ii. Bank statements,
    - iii. Full titles of all bank accounts including deposit accounts, retention accounts and foreign exchange accounts together with their account numbers and balances
    - iv. Copies of account opening forms for all bank accounts,
    - v. Particulars of all authorized signatories of all the bank accounts,
    - vi. Copies of resolutions provided to open bank accounts,



- vii. Details of loans, overdrafts, guarantees and any associated indemnities.
  - viii. Any securities held by the bank
  - c. That the costs of this Application be provided for.
  - d. That this Honourable Court be pleased to make any other or further orders as the circumstances and interests of justice herein may require.
2. The application is supported by the grounds on its face and the supporting affidavit of the Applicant's director and shareholder, Virji Meghji Patel, sworn on 25<sup>th</sup> October 2023. It is opposed by the Respondent through the replying affidavit of its Chief Manager, Prabhat Kumar sworn on 22<sup>nd</sup> February 2024. The application has been disposed by way of written submissions which are on record and which I will make relevant references to in my analysis and determination later on.

### **The Application**

3. The Applicant contends that it has received a notice of sale from one of its financiers NCBA Bank Kenya Limited as being in default of its financial obligations and the Applicant is apprehensive that its properties are in imminent danger of being sold off. That the said notice of sale is set to expire on the 30<sup>th</sup> October 2023 and the Applicant is further apprehensive that the Respondent will proceed to sell the Applicant's properties. The Applicant through a board resolution passed on the 12<sup>th</sup> July 2023 has resolved to conduct a forensic audit to establish the status of its financial affairs and that in order to conduct a comprehensive forensic audit, the Applicant requires to access its bank account number 002XXXX held at the Respondent institution.
4. The Applicant states that pursuant thereto and through its Advocates, it wrote to the Respondent and requested for access and information concerning the said account but that the Respondent has declined to release any information touching on the account to the Applicant and that the Applicant, being the Respondent's customer, operator of the said bank account and proprietor of the information so requested, is entitled to full access of the account and to the information.
5. The Applicant claims that the Respondent's actions have therefore derailed the forensic audit as the same cannot proceed without the relevant account information and that no prejudice shall befall the Respondent should the instant application be allowed as prayed. Thus, the Applicant urges that it is in the interest of justice that the prayers sought herein are granted.

### **The Respondent's Reply**

6. In response, the Respondent depones that the application is misconceived, ill advised, frivolous, vexatious, an abuse of court process and is intended to mislead this court and the same should be dismissed with costs awarded to the Respondent.
7. By way of background and summary the Respondent presents that on 10<sup>th</sup> August 2023, the Applicant through its Advocate wrote to the bank requesting for account information in respect to Account Number 0026XXXX. Vide a letter dated 16<sup>th</sup> August 2023, the Respondent replied to the Advocates whilst advising that by virtue of the Data protection Act as read together with the General Data Protection Regulations (GDR), they are mandated to keep all the data in their possession/under their control confidential and that their request for access to the information in respect to the account should be accompanied by instructions from all signatories to the bank account authorizing the Respondent to divulge the said information.



8. That on 24<sup>th</sup> August 2023, the Advocates for the Applicant wrote to the bank attaching a board resolution by the directors instructing its Advocates to obtain information on the company's bank account from the Respondent. The Respondent states that a quick read on the resolution failed to mention that the signatories to the bank account have consented to the Advocates receiving the account information and or failed to alter the list of the signatories to the account.
9. On the basis of the foregoing and failure to have proper instructions from the signatories, the Respondent states that it is in no position to disclose account information to third parties and are only bound to act within the express consent from the duly recognized signatories.
10. That following the commencement of the Data Protection Act, financial institutions are now required to adhere to other principles of data protection and as such the mandate of the Respondent is to ensure that all transactions and/or information on the account are properly authorized by the duly recognized signatories to the account. The
11. Respondent avers that in a bid to maintain the principle of customer confidentiality, it cannot be said to have unlawfully withheld account information from the Applicant and that the bank duly advised the Applicant's Advocates to procure instructions in writing from the signatories of the account holder, authorizing the bank to hand over the requisite documents and they failed to avail proper instructions from the signatories.
12. That the grant of the said access to the bank account information without the required consent, authorizations and/or without a court order would be a violation of the requirements set forth by the Data Protection Act and in blatant breach of the fiduciary duty bestowed upon the bank towards its customers.
13. In light of the forgoing, the Respondent states that it is in the interest of justice that the application be dismissed with costs awarded to the Respondent

### **Analysis and Determination**

14. From the parties' pleadings and submissions, the court is being called upon to determine whether it should compel the Respondent to avail the documents sought by the Applicant above. The court has had the opportunity to determine a similar application by the Applicant only that at the time, the respondent was a different bank. The Court (Mwangi J.,) in *Trv Towers Limited v Bank of Baroda (Kenya) Limited* [2024] KEHC 8595 (KLR) while allowing the Applicant's application held as follows:
  28. It is evident from the provisions of Article 35(1) of *the Constitution* of Kenya, 2010 that the right of access to information is only available to citizens. Section 2 of the *Access to Information Act* defines a citizen as any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens. This means that a company whose director(s) is/ are Kenyan citizen(s) is/are considered citizen(s) for purposes of enforcing the right of access to information under Section 4 of the *Access to Information Act* as read with Article 35(1) of *the Constitution* of Kenya, 2010.
  29. That being the case, and bearing in mind the fact that Virji Meghji Patel is a Director and Shareholder of the applicant company, though he is not a signatory to the bank account in issue, and taking into account that the orders being sought are aimed at establishing accountability in the manner a loan advanced to the applicant by NCBA and channeled through the applicant's bank account domiciled in the respondent was expended, it is my finding that the applicant company is entitled to the information it seeks.'



15. I am persuaded by the above decision and I need not belabour on the point that the Applicant is entitled to the information it seeks from the Respondent and that the Applicant's deponent, as a director and shareholder, is entitled to seek such information on his own behalf and on behalf of the Company even though he is not a signatory of the Applicant's bank account. I agree with the Applicant that it is unreasonable for the Respondent to withhold such information sought under the pretext that all signatories must agree to request for such information.
16. It is my finding that the Applicant is entitled to the information about itself from the Bank and therefore the issue of confidentiality does not arise as the same information does not relate to a third party. Further, I am satisfied that no prejudice will be suffered by the Respondent in availing the said documents requested by the Applicant and if anything, I believe that the Applicant will meet the attendant costs associated with the Respondent preparing and furnishing the said documents as per the terms of their banking relationship.
17. On costs, I agree with the decision in *Trv Towers Limited v Bank of Baroda*(supra) that since it is the Applicant who needs this information to establish the financial status of its own affairs, no party should be condemned to bear the costs of the other in this application but as I have stated, the Respondent is at liberty to charge such costs for the preparation and production of the documents sought as per the parties' banking contract.

### **Conclusion and Disposition**

18. It is for these reasons that I find merit and allow the Applicant's application dated 25<sup>th</sup> October 2023 by making the following dispositive orders:
  - i. An order be and is hereby issued compelling the Respondent to produce to the Applicant the documents listed below that are in their custody for auditing.
    - a. Bank account operating mandate forms
    - b. Bank statements
    - c. Full titles of all bank accounts including deposit accounts, retention accounts and foreign exchange accounts together with their account numbers and balances
    - d. Copies of account opening forms for all bank accounts
    - e. Particulars of all authorized signatories of all the bank accounts
    - f. Copies of resolutions provided to open bank accounts
    - g. Details of loans, overdrafts, guarantees and any associated indemnities.
    - h. Any securities held by the bank
  - ii. Each party shall bear its own costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF OCTOBER 2024**

.....  
**J.W.W. MONG'ARE**  
**JUDGE**

**In the Presence of:-**



1. Mr. Wanyonyi holding brief for the Plaintiff/Applicant.
2. Ms. Byegon for the Defendant/ Respondent.
3. Godfrey - Court Assistant

