



**Charania v Raj Metals Limited & another (Civil Case E161 of 2019)
[2024] KEHC 14643 (KLR) (Commercial and Tax) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E161 OF 2019
JWW MONG'ARE, J
NOVEMBER 18, 2024**

BETWEEN

KARIM CHARANIA PLAINTIFF

AND

RAJ METALS LIMITED 1ST DEFENDANT

HUAWEI TECHNOLOGIES(K) LTD 2ND DEFENDANT

RULING

1. This is a Ruling on the application dated 20th September, 2024. It is brought pursuant to Article 35(1) of the *constitution*, Sections 68 (1) and 69 of the *Evidence Act*, Sections 1, 1A, 3A and 22 of the *Civil Procedure Act* and Order 14 and Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Application sought that the Respondents be directed to produce, make discovery on oath and deliver/avail copies of statement of accounts for payments made to the 1st Respondent with regard to the matter in question more particularly the documents particularized in the Plaintiff's notice to produce and request for particulars dated 8th April 2024. it also sought to be awarded costs of the application.
3. The grounds are set out on the face of the application and are supporting by the annexed affidavit of Karim Charania sworn on 20th September, 2024. It was contended that the Applicant and the 1st Respondent entered into negotiations for a consultancy agreement for technical services in the year 2015 with a view to submit a bid to the 2nd Respondent. it was a term of the agreement that parties would share the profits. The 1st Respondent agreed and paid the applicant a sum of USD 33,000 for the payment received for 15 months and thereafter discontinued to remit any payments to the Applicant from January 2018 despite executing various contracts for the 2nd Respondent.



4. In response to the Application the 1st Defendant opposed the application through the Replying affidavit sworn by Edward Rattos its managing director on 31st October, 2024. He avers the 1st defendant did not enter into a consultation agreement with the Plaintiff for the supply of Technical services to the 2nd Respondent. He contends the Plaintiff did not contribute to the success of the 1st Defendant's bid. He states the Plaintiff is a stranger to the contract entered between the Respondents and thus cannot seek to benefit from a contract he was not a party to. He avers that the alleged contract between the Plaintiff and the 1st Defendant is unenforceable as against the 2nd Defendant. He also contends the contract between the Defendant is confidential and ought to be protected.**
5. The 2nd Defendant/Respondent opposed the application and filed grounds of opposition dated 25th October, 2024 and a replying affidavit sworn by Nasimiyu Machiri the legal counsel of Huawei Technologies (K) Ltd on 12th November, 2024. She avers the 2nd Defendant is a stranger to any contractual agreement between the Plaintiff and the 1st Defendant. She states the statement of account is a confidential document which when availed will prejudice the 2nd Defendant.
6. The application was canvassed by way of written submission. The Applicant's submissions are dated 15th November, 2024, and the 2nd Respondent submissions are dated 12th November 2024. The 1st Respondent had not filed its submissions at the time of writing the ruling.
7. The court has considered the application, the responses and the submissions filed by the parties. The issue for determination is whether the court should order discovery and production of the documents in possession of the Respondents.
8. Under Section 22 (a) of the [Civil Procedure Act](#) the court is vested with the authority to make discovery orders and similar directives. The section provides:
 1. "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.
9. The above provision of the law grants the court wide discretion powers in an application for discovery. The discretion ought to be exercised in a judicious manner and in the spirit of promoting fair access to justice.
10. The purpose of the discovery is to provide parties with the relevant documentary material during trial to assist the party in its case, which in turn allows a fair disposal of the suit. I am persuaded by this court's decision in Oracle Productions Ltd Vs Decapture Limited & 3 others [2014] eKLR in which it was held that: -

"The true purpose of discovery is to level the litigation field, to expedite hearing, reduce costs and allow parties to gauge the case they will face at the trial."



11. The Halsbury's Laws of England Vol 13, paragraph 1, provides the importance of discovery of evidence. it states as follows:-

“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”.

12. When faced with such applications for discovery the courts ought to be guided by the relevance of the document sought to be adduced in the pleadings. In the instant case the Applicant seeks that the Respondent's be ordered to produce and or avail copies of statement of accounts for payments made to the 1st Respondent on projects executed as per the pre-qualification for the supply and installation of Metal truncking materials from inceptions to date.

13. The 2nd Respondent disputes the production and it contends that it was not privy to any contract entered between the 1st Respondent and the Applicant and states that the Applicant has no cause of action against it and as such there is no cause of action worth arbitrating. The 2nd Respondent also fails to adduce the documents of the allegation that the documents contains confidential financial information/trade secrets belonging to the 2nd Respondent. In my view, confidentiality by itself is not a ground for denial of discovery of documents that would aid the court in the just determination of the suit.

14. The relevance of the documents sought arises from the 1st Respondent failure in remitting the profits to the Applicant from the year 2018, the Applicant intends to ascertain if the 1st Respondent engaged in the business of installing Metal truncking for the 2nd Respondent and failed to honor their contractual agreement by remitting the profits to the Plaintiff. In my view, the Plaintiff has laid a proper foundation his claim requesting for the discovery of documents.

15. I am also alive to the fact parties have a right to access information as envisaged in article 35(1) (b) of the *constitution*. The section provides as follows:

“Every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom.”

16. In an application for discovery of documents the court's purpose it to aid a party to get documents crucial to their case documents which are only within the custody of the opponent party. The Applicant has demonstrated that the statement of accounts is within the possession of the Respondents. This court considers that it is necessary for the Plaintiff to get a full disclosure of the documentary evidence, for the court to adjudicate the dispute in the suit. In my view, I am not persuaded that producing the said documents would prejudice the 2nd Respondent in any way.

17. In the substantive dispensation of justice pursuant to Article 159 of the *constitution* this court is obligated to compel the Respondents to adduce and or avail the statement of accounts relating to the 1st Respondent drawn in the cause of the business transaction which are in the possession of the 2nd Respondent.



18. In the foregoing I have come to the conclusion that the application dated 20th September, 2024 has merit. I allow the same and make an order for discovery, on oath, and delivery to the Plaintiff all the statement of accounts for payments made by the 2nd Respondent to the 1st Respondent on projects executes as per the request for pre-qualification for the supply and installation of Metal Trunking material from inception till date.

19. The costs of the application shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY at NAIROBI this 18TH DAY OF NOVEMBER 2024.

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. N/A for the Plaintiff/Applicant.
2. N/A for the Defendant/Respondent.
3. Amos - Court Assistant

