



REPUBLIC OF KENYA



**KENYA LAW**  
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**Dream Big Consultants Limited v Diamond Trust Bank (K) Limited, Watamu Branch  
(Civil Case E008 of 2024) [2024] KEHC 13484 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL CASE E008 OF 2024  
SM GITHINJI, J  
NOVEMBER 6, 2024**

**BETWEEN**

**DREAM BIG CONSULTANTS LIMITED ..... PLAINTIFF**

**AND**

**DIAMOND TRUST BANK (K) LIMITED, WATAMU BRANCH ... DEFENDANT**

**JUDGMENT**

1. Vide the Complaint dated 24th April, 2024 the Plaintiff sought the following prayers;
  - a. Permanent injunctive orders against the Defendant restraining it and/or any other person (s) acting on its behalf from blocking the Plaintiff's access to the Plaintiff's bank account held at the Defendant's branch, being Account No. 0729573001 and/or dealing with the same in any manner, whatsoever detrimental to the rights and interest of the Plaintiff herein.
  - b. Damages for the unlawful and/or illegal acts of the Defendant of blocking and/or freezing the Plaintiff's bank Account held at the Defendant's branch, being Account No. 0729573001.
  - c. Any other relief or remedy the court may deem fit and just in the circumstances.
  - d. Costs of this suit.
2. The matter proceeded for full hearing on the 16<sup>th</sup> day September, 2024.
3. PW1 Agnes Nthenya Kilonzo told the court she recorded a statement dated 24<sup>th</sup> April, 2024. She told the court she is the Director of the Plaintiff's Company authorized to represent the said Company vide a Resolution dated 22<sup>nd</sup> April, 2024. She also told the court that she a holder and/or owner of a Bank Account No. 0729573001 at the Defendant's Bank. According to her, at the request of the Plaintiff, the Bank account was blocked and/or frozen to enable the Plaintiff resolve issues relating to the Company.



4. It is her testimony that on or around 1<sup>st</sup> March, 2024 there was a change of Directorship of the Company and a CR 12 form was issued by the Registrar of Companies indicating the Directors as the Plaintiff and Fadi Farhat holding equal shares. She testified that on 12<sup>th</sup> April, 2024 they requested the Bank account to be unblocked and/or unfrozen but the defendant declined the request. That subsequent verbal requests have been futile yet they urgently require monies to fund the business of the company.
5. The Defendant has never entered appearance though service had been effected.

### **Submissions**

6. The Plaintiff through the firm of Kenga & Company filed submissions dated 18<sup>th</sup> September, 2024.
7. Counsel submitted that the law of evidence requires that whoever alleges the existence of a particular fact must tender evidence to prove the said allegations. The Plaintiff, through its director has proved to be a director of the Plaintiff's Company as well as proving the existence of the bank account. That the Plaintiff has also proved that the Defendant has refused to unblock the bank account, despite various requests and demands. He submitted that the actions herein are undoubtedly unlawful and/or illegal and/or unprocedural, without any colour of right, whatsoever.
8. He also submitted that the Plaintiff suffered loss due to the blocking and/or freezing of the Plaintiff's bank account without any justification and orders on damages are deserved in the circumstances. They urged the court to award damages for the Defendant's unlawful and/or illegal acts herein in form of punitive and/or exemplary damages. Punitive damages to serve as a punishment for a conduct considered as grossly negligent or intentional.
9. Counsel further submitted that the Defendant's actions herein were not only negligent but also intentional and claims an award of damages in the sum of Kshs. 500,000/=, which amount is said to be reasonable in the circumstances. Similarly, it is alleged that damages will serve as an example for deterrence and/or prevention from further acts of illegality and/or unlawfulness, and a sum of Kshs. 400,000/= would be reasonable in the circumstances.

### **Disposition**

10. I have considered the pleadings before me, the evidence and the comprehensive submissions by the plaintiff. This suit is undefended therefore all the evidence is uncontroverted.
11. The main issue for determination is whether the plaintiff has proved its case against the Defendant to the required standard.
12. Although the suit is undefended, the Plaintiff has a duty to formally prove its case on a balance of probabilities as is required by law. In the case of *Gichinga Kibutha Vs Caroline Nduku (2018) eKLR* the Court held that;  

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
13. PW1 told the court that at the request of the Plaintiff, the Bank account was blocked and/or frozen to enable the Plaintiff resolve issues relating to the Company. That on 1<sup>st</sup> March, 2024 there was a change of Directorship of the Company and a CR 12 form was issued by the Registrar of Companies indicating the Directors as the Plaintiff and Fadi Farhat holding equal shares. She also told the court



that on 12<sup>th</sup> April, 2024 they requested the Bank account to be unblocked and/or unfrozen, but the defendant declined the request. That subsequent verbal requests have been futile yet they urgently require monies to fund the business of the company.

14. I have considered the Plaintiff's pleadings, witness statement, the oral evidence led in court and the documents produced in support of the Plaintiff's case. The Plaintiff narrated in her evidence the entire history leading to the freezing of the bank account at the Defendant bank. The evidence is uncontroverted, the defendant despite being given an opportunity to lay his case for consideration by this court, did not do so.
15. In view of the foregoing, judgment is hereby entered for the Plaintiff against the Defendant as follows; -
  - a. Permanent injunctive orders against the Defendant restraining it and/or any other person (s) acting on its behalf from blocking the Plaintiff's access to the Plaintiff's bank account held at the Defendant's branch, being Account No. 0729573001 and/or dealing with the same in any manner, whatsoever detrimental to the rights and interest of the Plaintiff herein.
  - b. Damages for unlawful and illegal acts of the defendant of freezing the Plaintiff's bank Account held at the Defendant's branch in the sum of Kshs. 200,000/-.
  - c. Costs of the suit.

**JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**S.M. GITHINJI**

**JUDGE**

In the presence of; -

Ms Chengo holding brief for Mr Kenga for the Plaintiff

