



Kariuki v Barclays Bank of Kenya Limited (Now ABSA Bank Kenya PLC) (Civil Case E613 of 2023) [2024] KEHC 15573 (KLR) (Commercial and Tax) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E613 OF 2023
PM MULWA, J
DECEMBER 5, 2024**

BETWEEN

JAMES MBOGO KARIUKI PLAINTIFF

AND

BARCLAYS BANK OF KENYA LIMITED (NOW ABSA BANK KENYA PLC) DEFENDANT

RULING

1. What is before the court for determination is the Plaintiff's Notice of Motion dated 13th December 2023 made under Order 51 Rule 1 and 3 of the Civil Procedure Rules and Sections 63 (c) and (e), 1A, 1B, 3 and 3A of the *Civil Procedure Act*. The Plaintiff primarily seeks an order compelling the Respondent (the Bank) to furnish him with a complete, true and accurate statement of account. This application is supported by grounds on its face and the Plaintiff's affidavits sworn on 13th December 2023 and 20th July 2024. It is opposed by the Bank through the Grounds of Opposition dated 5th March 2024 and the replying affidavit of its Secured Lending Team Leader-Collections and Recoveries, Samuel Njuguna, sworn on 5th June 2024. The court directed that the application be disposed by way of written submissions which are on record.
2. The Plaintiff's position is that the Bank loaned him a sum of Kshs. 2,000,000.00 which he properly serviced and topped it up in June 2015 with a further Kshs. 1,900,000.00 which was to be repaid on a reducing balance. That the same was an unsecured salary loan and was insured by the Bank and he had since repaid a sum of Kshs. 4, 500, 000.00 which is over and above the total amount of the loan advanced to him by the Bank.
3. The Plaintiff claims that on or about September 2019, he was retrenched from Devki Steel Mills Limited, his employer and that there was a memorandum of understanding between the Bank and



Devki Steel Mills Limited for a loan retrenchment cover settling up to a maximum of 9 months instalments. The Plaintiff avers that he duly filed the retrenchment and insurance forms that confirmed that he was covered up to nine months and claims that on 27th May 2020, the Bank maliciously and unlawfully caused the Plaintiff to be listed with Metropol Credit Reference Bureau Limited on allegations of having defaulted to repay his loan which stood at Kshs. 2, 253, 974, 45.

4. That the Bank caused him to be listed as a defaulter without giving him any notice prior and/or after or at all as required by the Banking (Credit Reference Bureau) Regulations, 2020, and that contrary to a cushion by government to borrowers during the COVID 19 pandemic vide a Gazette Notice No. 3096 of 8th April 2020 on loans that fall in arrears from 1st April 2020 to 30th September 2020, the Bank still listed him with Metropol Credit Reference Bureau.
5. The Plaintiff states that he came to know about the listing when he was denied a loan facility at Equity Bank and other money lending institutions on grounds that he was a loan defaulter listed with Metropol Credit Reference Bureau Limited. The Plaintiff went to Metropol Credit Reference Bureau Limited's offices and obtained a Consumer Credit Report which was confirmed that he had been listed on 27th May 2020. The Plaintiff states that to his surprise he received a message from his cell phone on 19th October, 2020 as follows; "please note that as required by law we will submit your credit information to CRB in 60 days. Please pay Kshs 2, 253, 974.45..."
6. The Plaintiff avers that the said message was only sent to him 11 days after he had been maliciously and unlawful listed with Metropol Credit Reference Bureau Limited as a loan defaulter. He wrote to the Bank and was advised to lodge a complaint with the Bank's alternative dispute resolution mechanism at Tatua Centre in accordance with the Banking (Credit Reference Bureau) Regulations 2020. According to the Plaintiff, the said mediation commenced on or about December 2022 but yielded no fruits prompting the filing of the instant suit.
7. The Plaintiff urges that he has greatly been injured in credit, reputation, character and continues to suffer financial loss, damage and embarrassment as a result of the Bank's unlawful actions. That he is greatly apprehensive his name will continue being tainted if the same remains listed with the Metropol Credit Reference Bureau Limited as a loan defaulter and that it is only fair and just that the application be allowed as prayed.
8. In response, the Bank depones that the application is laced with deceit, misrepresentation, perjury intended to mislead the Court to give life to a claim that is dead on arrival. That the Plaintiff has admitted obtaining loan facilities from the Bank, which is yet to be repaid in full and he has admitted to defaulting in the repayment of the loan facility. The Bank asserts that as of March 2024, the outstanding loan balance was Kshs. 2,484,575.25 and that the listing of the Plaintiff with the Credit Reference Bureau (CRB), whether with positive or negative score is mandatory as per Section 36A of the [Banking Act](#). That in fact, on 18th February 2014, the Central Bank issued a Banking Circular No. 1 of 2014 addressed to all Banks, Mortgage Finance Companies and Microfinance Banks informing them of the mandatory requirement to share with all licensed CRBs full file credit information on monthly basis on or before the 10th day of each succeeding month.
9. The Bank states that the requirement to notify the customer of the listing is limited to only when a credit information provider furnishes negative information to a bureau with respect to a customer as per Rule 26 (1) of the Banking (Credit Reference Bureau) Regulations 2020 issued under the [Banking Act](#). That such listing is a legal requirement and the Plaintiff has admitted that he has been receiving default notifications from the Bank including the Credit Reference Bureau Notification prior to the Bank updating the information with the Credit Reference Bureau with negative (default) information.



10. The Bank avers that the Plaintiff is seeking for an order of delisting from the Credit Reference Bureau by the Bank, however, only the Credit Reference Bureau, the statutory institution which is tasked with listing, investigating, resolving disputes and delisting can effect such an order. That the Bank has no powers to delist but can only forward information to the Bureau showing that the loan is paid, which is not the case in this matter.
11. In any event, the Bank depones that the CRB report produced by the Plaintiff reflects that he has also been listed for another facility with NCBA Bank Kenya PLC which is in default and that Regulation 37 (5) of the Banking (Credit Reference Bureau) Regulations provides that where the customer believes the information contained in the database is inaccurate, erroneous or out of date, the customer may notify the Bureau in writing of the information disputed. Further, that Regulation 37 (6) to (14) provided that once notified, the Bureau is required to take steps to rectify any error after conducting investigations and may contact any person who has provided that information and that the Plaintiff has not disputed the correctness of the information contained in the CRB report it has produced. And again, default in payment of the loan is not disputed.
12. The Bank contends that it has always furnished the Plaintiff with the accurate statement of account on request and that it has actively engaged the Plaintiff with a view to solving the matter amicably, but the Plaintiff declined to take advantage of the indulgence to clear the outstanding loan. The Bank states that it is a stranger to the alleged Memorandum of Understanding between itself and Devki Steel Mills Limited for the alleged Plaintiff's loan retrenchment cover and that the Plaintiff has misled the Court that his facility application had a loan retrenchment cover, which is false.
13. The Bank asserts that the Plaintiff has not produced evidence of the alleged retrenchment and that in any event, the orders sought in the application are of permanent nature and have the effect of disposing off the suit at an interlocutory stage before the Bank is given an opportunity to testify, produce evidence and cross-examine the Plaintiff.
14. For these reasons, the Bank urges that it is in the interest of justice that the Plaintiff's application be dismissed forthwith, with costs.

Analysis and determination

15. I have gone through the application, the Bank's response and the parties' submissions. Even though the Plaintiff submits that the court should order that he be delisted from the CRB and that he be issued with a clearance certificate, I note that this prayer was sought "pending hearing and determination of the application herein". This means that the prayer was drawn and any order was to subsist during the pendency of the present application and not after the determination. Whereas it is normal to formulate prayers like that, such prayers are usually relevant when the application is being handled by the court Ex-parte in the first instance. When words like that are used, it becomes plain or obvious to the court that the prayers are meant to be in force during the pendency of the application. If and when granted, the duration of such prayers only relate to the period before the application is determined. This is so because that is the period during which the application is pending (See Nyaga v Faulu Micro-Finance Bank Limited (Miscellaneous Civil Application E009 of 2021) [2022] KEELC 13335 (KLR)).
16. When I gave directions on the application on 15th December 2023, I essentially declined to allow the Plaintiff's prayer that sought to delist him from the CRB and that he be issued with the clearance certificate pending hearing and determination of the application. This means that this prayer is now spent and the same could only have had a life at this stage if it was sought pending hearing and determination of the suit. As no such prayer exists, I find that the only prayer relevant for consideration at this stage is that seeking the Bank to produce a complete, true and accurate statement of account.



I do not think it is in dispute that the law and banking practice impose certain duties and obligations to the Bank. One of the inescapable duties is that the Bank must render accounts to the customer by supplying bank statements and that this duty cannot be waived by agreement (see *Roy Machara Nduati & Dorothy May Watts T/A Shanzu Sea Haven v Barclays Bank of Kenya Ltd* [2008] KEHC 1047 (KLR)).

17. The Bank deponed that it had always furnished the Plaintiff with accurate statements of account on request and that indeed, the Plaintiff had annexed one in its deposition “JMK 2” and the Bank has annexed one in its deposition as well (pgs. 1-7 of “PB 1”)

1. It should not be lost that Section 176 of the *Evidence Act* creates a presumption in favour of the Bank as follows:

“A copy of any entry in a banker’s book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded.”

19. It is therefore incumbent upon the Plaintiff to demonstrate any error, irregularity or illegality on any entry of a statement of account issued by the Bank. This, the Plaintiff has not done meaning that it is presumed that the statements of account issued to him and annexed by the Bank are a true account and reflection of his financial standing with the Bank. As the statement of account has already been annexed and now furnished, I find that this prayer is also now spent and was unnecessary, considering that the Plaintiff could have gotten the same from the Bank as a matter of right, were he to apply for the same from the Bank rather than the court.

Disposition

20. For the above reasons, I find that the Plaintiff’s application dated 13th December 2023 has no merit and the same is dismissed with costs to the Bank.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF DECEMBER 2024.

P.M. MULWA

JUDGE

In the presence of:

N/A for Plaintiff

Mr. Kimani for Defendant

Court Assistant: Carlos

