



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCC NO. E440 OF 2019

KEZIAH WAMBUI NDIRANGU.....PLAINTIFF

VERSUS

EQUITY BANK (KENYA) LIMITED.....DEFENDANT

RULING

1. Through the application dated 21st January 2020, the plaintiff seeks orders that:

1. Spent

2. The accounts as between the parties herein relating to Equity Bank Account numbers [...], [...], [...], [...],[...] and [...] be examined by the Deputy Registrar, High Court Nairobi Commercial Division) to determine the amount of loan or loans taken by the plaintiff, the repayments made by the plaintiff, the interest and penalties imposed and the legality of such interest and penalties and determine any over payment by the plaintiff.

3. The Deputy Registrar in taking accounts be at liberty to summon and examine such expert witnesses as may be necessary and to receive, peruse, study and adopt documents or reports as may be necessary.

4. Costs hereof be in the cause.

2. The applicant's case is that sometime in 2010, she obtained a loan from the defendant in order to finance construction works on L.R. No. Kabete/Mwimuto/T.48 but that the defendant has not dealt with her in a transparent manner as it has failed to render full and proper accounts thus necessitating the filing of the instant suit. The plaintiff contends that the defendant's actions have resulted in the unlawful demands for loan repayments that were not disbursed to her and that it is in the interest of justice that a proper inquiry be made into her accounts.

3. The defendant opposed the application through the replying affidavit of its Credit Manager **Mr. Benjamin Munge** who states that the application is riddled with suppression and/or distortion of facts. He avers that the applicant obtained a loan facility of kshs 15 million from the defendant in the year 2010 which was secured by a First Legal Charge over her property LR. No. Kabete/Mwimuto/T.48. He adds that the applicant later approached the defendant for two further charges over the same security but that she failed to service the loans as agreed, thereby leading to the issuance of the statutory notices.

4. He further avers that the prayer for taking accounts is not merited as the applicant is fully aware of her debt and the deductions that have been effected in her account to offset the debt.

5. It is the respondent's case that it will not be in the interest of justice to allow the instant application.

6. Parties canvassed the application by way of written submissions which I have considered.

7. The main issue for determination is whether the applicant has made out a case for the examination of her bank accounts by the Deputy Registrar of this court.

8. Order 20 Rule 1 and Order 28 Rule 9 and 10 of the Civil Procedure Rules stipulate as follows: -

“[Order 20, rule 1.] Order for accounts.

1. Where a plaintiff prays for an account, or where the relief sought or the plaintiff involves the taking of an account, if the defendant either fails to appear or does not after appearance by affidavit or otherwise satisfy the court that there is some preliminary question to be tried, an order for the proper accounts with all necessary inquiries and directions usual in similar cases shall forthwith be made.”

[Order 28, rule 9.] Examination of accounts by referee.

“9. On the application of any party or of its own motion in any suit in which the examination of accounts is necessary or desirable, the court may refer the accounts for examination to such person as it thinks fit.

[Order 28, rule 10.] Instructions to referee.

10. (1) The court shall furnish a referee appointed under rule with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) The proceedings and report (if any) of the referee shall be evidence in the suit, but where the court has reason to be dissatisfied with them it may direct such further inquiry as it shall think fit.”

9. In the present case, the plaintiff makes the following prayers in the plaint: -

a) An order that the defendant renders full accounts relating to my accounts with it and especially with regards to loans advanced and recoveries made.

b) An order that moneys unlawfully appropriated by the defendant from my accounts, namely [...],[...],[...],[...],[...]and [...] be refunded forthwith.

c) An order that the said amounts be paid with interest at commercial rates.

d) An order for costs in favour of the plaintiff.

10. A perusal of the court file indicates that the defendant entered appearance on 9th December 2019. It is however not clear if the defendant filed its defence as there was none is reflected on the court record.

11. In the case of *Christopher Mutuku Ndolo & Another v Stanbic Bank Ltd [2014] e KLR* it was held: -

“The court is supposed to make such inquiries as are necessary in taking accounts under the said rule. Those inquiries involve other mechanisms and experts in the subject of account. One way of doing it would be for the court to appoint an umpire who professes expertise but with the consent of the parties to carry out the exercise and file a report on the accounts and what is due to any party.”

12. The defendant’s case was that the instant application is intended to assist the applicant evade settling the debt that she owes the bank.

13. My finding is that the nature of the orders sought by the applicant herein will not prejudice the defendant in any way but will assist the court, and the parties, in arriving at the true status of the applicant’s loan accounts.

14. I am also of the view that the taking of the accounts should be carried out by an accountant who will be better placed to understand the workings of the banks in as far as tabulating the loan accounts is concerned.

15. Consequently, I allow the application dated 21st January 2020 in the following terms:

1. The accounts as between the parties herein relating to Equity Bank Account numbers [...],[...],[...],[...] and [...]be examined by the Deputy Registrar, High Court Nairobi Commercial Division) to determine the amount of loan or loans taken by the plaintiff, the repayments made by the plaintiff, the interest and penalties imposed and the legality of such interest and penalties and determine any over payment by the plaintiff.

2. The Deputy Registrar in taking accounts be at liberty to summon, at the applicant’s expense, and examine such expert witnesses as may be necessary and to receive, peruse, study and adopt documents or reports as may be necessary.

Dated, signed and delivered via Microsoft Teams at Nairobi this 1st day of July 2021 in view of the declaration of measures restricting court operations due to Covid -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Ingutya for Plaintiff.

Mr. Onyango for Wanjau for Defendant

Court Assistant: Sylvia.