Oriental Commercial Bank v Shabbir's Motor Spares Limited & 3 others (Civil Case 513 of 2006) [2021] KEHC 161 (KLR) (Commercial and Tax) (14 October 2021) (Ruling)

Neutral citation: [2021] KEHC 161 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CIVIL CASE 513 OF 2006

F TUIYOTT, J

OCTOBER 14, 2021

BETWEEN

ORIENTAL COMMERCIAL BANK ..... PLAINTIFF

AND

SHABBIR'S MOTOR SPARES LIMITED ..... 1ST DEFENDANT

MOHAMMEDALI KHATAU THAVER ..... 2ND DEFENDANT

SHABBIR MOHAMEDALI KHATAU ..... 3RD DEFENDANT

MOHAMMEDTAKI MOHAMED KHATAU ..... 4TH DEFENDANT

RULING

1. An issue has arisen as to whether the signatures said to be of Mohammedtaki Mohamed Khatau appearing on a charge, further charge and guarantees are truly his. He then files the Notice of Motion dated 1st February 2021 for the following orders:-

   a) THAT the Court be pleased to order that the Plaintiff do supply to the 4th Defendant/ Applicant the originals of the following documents:-

      i. The Guarantee by Mohamedtaki Mohamedali Khatau dated 26/2/1997;

      ii. The Charge dated 19/9/1997;

      iii. The Application for Banking Facility letter dated 21/6/1999 and

      iv. Any other document allegedly bearing the signature of the 4th Defendant in this matter.

   b) THAT the Court be pleased to make an order that the original documents in paragraph (a) above be tendered to the Forensic Document Examiner at DCI (Directorate of Criminal

Investigations) headquarters Nairobi for purposes of examination and comparison to determine whether the signatures appended thereon belong to the 4th Defendant.

c) THAT a report be submitted to this Court within a period of time to be fixed by the Court.

d) THAT in default of the Plaintiff supplying the documents in (a) above as ordered by the Court, the Court do hereby expunge all the documents listed in paragraph (a) above.

e) THAT the costs of this application be provided for.

2. The application is aligned to the Defence filed by the 4th Defendant in which he denies the signatures. There is also evidence that the 4th Defendant's advocate wrote seeking the documents.

3. I have read the response by the Bank made through the affidavit of Wilfred Machini sworn on 23rd February 2021. He alleges that the application is simply to delay this already old matter.

4. When I look at paragraph 19 of his affidavit, then I am able to get an answer to the application. Mr. Machini states:-

> " [19] THAT it is evidence that the 3rd Defendant has not been prevented from having an expert examine the documents supplied to them by the Plaintiff, as they have filed a Document Examiner Report in their list of documents hence he is just using this application as an excuse for further delay of the matter and frustrating the parties herein."

5. If the authenticity of the signatures is in question and if the 4th Defendant's defence is premised on denial of those signatures, then it seems just that they be presented for authentication. To prevent undue delay, the Court will impose strict timelines.

6. I allow the application. The Bank to present the documents in prayer (a) within 7 days hereof. The DCI to examine the said documents and present a report within 30 days of receipt of the documents by the 4th Defendant so that Bank is not prejudiced. The Bank shall be liberty to send a representative at the document examination. Because of the lateness in bringing this application, costs shall be to the Bank.

DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2021

A. MABEYA, FCI Arb

JUDGE