



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 50 OF 2019

HEDDAH AKINYI OLOO.....1ST PLAINTIFF

PHILAFE ENGINEERING LTD.....2ND PLAINTIFF

VERSUS

METROPOL CORPORATION LIMITED.....DEFENDANT

RULING

1. Philafe Engineering Ltd, the 2nd Plaintiff herein, applied for asset financing from Nic Bank in the sum of ksh 3,100,000 to enable it purchase a Pick up for its use. The 2nd Plaintiff consented to NIC Bank to obtain inter alia credit report on from Metropol Corporation Ltd, the Defendant herein. The Defendant forwarded the requested report dated 18/1/2019 to NIC Bank.

2. Upon receipt of the report, NIC Bank notified both Heddah Akinyi Oloo (1st Plaintiff) and the 2nd Plaintiff that it could not approve their asset financing application because of the negative information contained in the credit report received from the Defendant.

3. The Plaintiffs faulted the report for being inaccurate and malicious. They consequently filed this suit in which they seek for inter alia both mandatory and prohibitory orders of injunction, declaratory orders and damages vide the plaint dated 18/3/2019.

4. The Defendant filed a defence to deny the Plaintiffs' claim. The Defendant also filed a notice of preliminary objection dated 5th April 2019, the subject matter of this ruling.

5. When the preliminary objection came up for inter partes, learned counsels appearing in the matter recorded a consent order to have the same disposed of by written submissions. I have considered the grounds stated on the face of the notice of preliminary objection. I have also considered the rival written submissions.

The Defendant in its notice of preliminary raised and argued two grounds.

6. The **first ground** is to the effect that there is an alternative statutory mechanism under Regulation 35 (5) of the credit Reference Bureau Regulations, 2013 which the Plaintiffs have failed to utilize therefore this suit is incompetent, frivolous and premature hence should be struck out. It is their submission that the Plaintiffs have failed to notify in writing that the information in its database is inaccurate, erroneous or outdated. It is argued that had done that the dispute could have been resolved in the manner prescribed under the aforesaid regulations.

7. The Plaintiffs opposed this ground stating that their advocate wrote a demand letter dated 1st February 2019 to the Defendant pointing out the disputed information contained in the credit report. The Plaintiffs further argued that the Defendant failed to take steps provided for under Regulations 35 (5) (6-10) of the credit Reference Regulation, 2013 thus prompting the Plaintiffs to file this action after more than a month lapsed from the date of notice.

8. The **second ground** which was ably argued is that this court is said to have no jurisdiction to hear and determine the matter at this stage. It is stated that the matter is within the pecuniary jurisdiction of the subordinate court. The Plaintiffs did not address this court on the issue touching on the pecuniary jurisdiction but they instead argued that this court is well clothed with the jurisdiction to hear and determine the matter.

9. Having considered the material placed before this court together with the rival written submissions, it is not in dispute that Regulation 35(5) of the credit Reference Bureau Regulations, 2013, has an elaborate dispute resolution mechanism which is provided to be used to resolve disputes arising out of credit reports.

10. The question to be determined here is whether the Plaintiffs invoked that procedure before coming to court. It is not disputed by the

Defendant that it received a demand notice from the Plaintiffs' advocate dated 1st February, 2019. In the aforesaid letter, the Plaintiffs demanded from the Defendant inter alia as follows:

“Please be advised that we are now instructed to demand from you which we hereby do, to immediately and not later than 3 days from the date of service hereof, make a retraction of the said report and correction of the disputed and injurious information against our client Heddah Akinyi Oloo and equally that you furnish NIC with an appropriate and a factual report with a copy to us together with an accompanying apology and in default we shall move to court for the appropriate remedies against you without any further reminders whatsoever”.

11. The Defendant has not denied receipt of the aforesaid demand letter. The Defendant has equally not responded to the same. A careful reading of Regulation 35 will reveal that the customer is merely required to notify the Bureau of the disputed report. The aforesaid Regulation imposes a duty on the Bureau to take the steps provided under the Regulations to address the customer's complaint.

12. In my view, the Plaintiffs' demand notice acted as sufficient notice to the Defendant to kick-start the process prescribed under Regulation 35 within 5 days from the date of service. It is apparent that the Plaintiffs gave the Defendant a notice of three (3) days to act but still, the Plaintiff waited for more than 30 days before filing this suit.

13. I am satisfied that the Plaintiffs were entitled to approach this court when the Defendant failed to kick-start the process under Regulation 35. The preliminary point is found to be without merit.

14. The second preliminary issue is that this matter is within the pecuniary jurisdiction of the subordinate court. I find this point to be valid but the same is not fatal. This court does not lack the pecuniary jurisdiction. The fact that the pecuniary jurisdiction is within that of the subordinate court, does not in itself mean that the jurisdiction of this court is ousted. The court enjoys the power to either entertain the matter or make the appropriate orders to transfer the same to the subordinate court for hearing and determination.

15. In the end, the Defendant's notice of preliminary objection is found to be without merit. It is dismissed with costs to the Plaintiff.

Dated, Signed and Delivered at Nairobi this 21st day of January, 2020.

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J.K. SERGON

JUDGE

In the presence of:

..... for the 1st Plaintiff

..... for the 2nd Plaintiff

..... for the Defendant