



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 62 OF 2017

JACOB OTIENO OBIERO.....PLAINTIFF

VERSUS

EQUITY BANK LTD.....DEFENDANT

RULING

1. On 18/9/2017, the court recorded the following consent from the parties:-

i. "The Respondent is granted 14 days to file and serve a further affidavit to introduce an accountants' report in response to the report filed by the plaintiff dated 7/8/2017.

ii. Upon service of the Report by the Defendant, and depending on any issues arising, the parties shall appoint an independent accountant to file a report reconciling the two reports by the two experts. That shall be done within 30 days after service but not later than the 5/11/2017.

iii. Should the parties fail to agree on the expert to reconcile the two reports, the court shall appoint a registered accountant to reconcile the two reports on its behalf.

iv. The reconciliation accountants' report shall be adopted as the finding of the court on the dispute of what sums is due from the plaintiff to the defendant except if any legal issue shall arise, in which event counsel shall submit on such issue.

Mention on 8/12/2017 to confirm status.

v) Costs in the cause".

2. Both parties filed respective audit reports on different dates but the said reports could not agree. With that disagreement on audit reports even the counsel could not agree on a third auditor to reconcile the two reports. The matter was then left to court to appoint an auditor to reconcile the two differing reports. The court still did not impose an auditor on the parties but gave to them names of some three audit firms and both counsel settled on one Ms. Odhiambo Ochieng and Company Certified Public Accounts.

3. That auditor did file two reports the second one having been occasioned by the need to make it certain whether:-

- Any sum is owed between the parties.
- If yes, what party owes how much to the other.

4. The second report by the third auditor says at page 2 paragraph 3 & 4 that Mr. Jacob Obiero, the plaintiff does not owe to Equity Bank any money. Drawing from the consent of 18/9/2017 as subsequently refined, this court has come to the conclusion that there are two reports by each side which have been reconciled by a third auditor which is unequivocal on the dispute between the parties. The report has effectively defined the dispute between the parties.

5. Following the consents, I do not see no benefit to be derived by calling the auditor for cross examination when parties agreed that his report would be adopted as the determination of the court.

6. I therefore adopt that report as a determination of the court and enter a judgment and determination that the plaintiff owes no money to the

defendant.

7. This matter having proceeded with full cooperation of the parties within a remarkably very short time, I do commend parties for their co-operation in adopting Alternative Dispute Resolution and decline to award costs to the plaintiff even though he has succeeded.

8. Let each party bear own costs.

Dated and delivered at Mombasa this 15th day of October 2018.

P.J.O. OTIENO

JUDGE