



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

(CORAM: CHERERE-J)

CIVIL SUIT NO. 52 OF 2011

BETWEEN

SOKHI INTERNATIONAL (K) LTD.....1ST PLAINTIFF

VIJAY KUMAR SINGH.....2ND PLAINTIFF

LABH SINGH SOKHI.....3RD PLAINTIFF

RAJEEV PARMA.....4TH PLAINTIFF

RAJU NARENDRANATHAN VETILYATIL.....5TH PLAINTIFF

ASHISH KUMAR SAMANTHA.....6TH PLAINTIFF

CHANDER BHAN SINGH.....7TH PLAINTIFF

MUMTAZ MUGHAL.....8TH PLAINTIFF

AND

EQUATORIAL COMMERCIAL BANK.....1ST DEFENDANT

KERETO MARIMA.....2ND DEFENDANT

IAN SMALL.....3RD DEFENDANT

AND

COUNTERCLAIM

BETWEEN

EQUITORIAL COMMERCIAL BANK LIMITED.....PLAINTIFF

AND

VIJAY KUMAR SINGH.....1ST DEFENDANT

LABH KUMAR SINGH.....2ND DEFENDANT

HARPAL SINGH SOKHI.....3RD DEFENDANT

AND

ATTORNEY GENERAL.....INTERESTED PARTY

RULING

1. By a notice of motion dated 10th October, 2018 brought under Article 35 of the Constitution; Sections 4, 5, 8, 17 and 18 of the Access to Information Act No. 31 of 2016 and Section 3 and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and all enabling provisions of the law, the 2nd Plaintiff in the original suit and also the 1st Defendant in the counterclaim (*hereinafter referred to as the Applicant*) prays for orders **THAT:-**

1) The Interested Party be ordered to supply the court and the Applicants with certified copies of all records/documentation contained in SOKHI INTERNATIONAL (K) LTD file kept and in the custody of the Interested Party

2) Costs be in the cause

2. The application is based mainly on the ground that the 1st, 2nd and 3rd Defendants in the original action did on 22nd May, 2018 file grounds of opposition in response to the Applicant's application dated 5th April, 2018 opposition the application on grounds among others that receivership against the Plaintiff ceased on 20th August, 2014 and that documents thereof had been filed but that a perusal of records held by the Interested Party has revealed that such documentation has not been filed.

3. The application is supported by an affidavit sworn on 10th October, 2018 by **VIJAY KUMAR SINGH** the 2nd Plaintiff in the original suit and also the 1st Defendant in the counterclaim in which he reiterates the grounds on the face of the application. Attached to the affidavit is a letter dated 8th February, 2018 by AIMS REGISTRARS to the effect that receivership of SOKHI INTERNATIONAL (K) LTD has not been lifted and a letter dated 14th September, 2018 from applicant's advocate to the Interested Party requesting for Statement of Affairs at 5.4.04 and supporting schedule thereof and Form No. 223 dated 17.1.05 marked **VKV 1** and **VKV 2** respectively.

LEGAL ANALYSIS

4. Article 35 of the Constitution provides that:-

1) "Every citizen has the right of access to—

a) information held by the State; and

b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

5. I have considered the application which is not opposed. Applicant's application dated 5th April, 2018 is still pending determination.

6. It is trite law that "whoever alleges must prove". **Section 107 of the Evidence Act, Chapter 80 Laws of Kenya** stipulates this in the following terms:

1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist.

2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person

7. Further **Section 109** in narrowing down to proof of particular facts, stipulates:

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

8. **Section 110** further provides that:

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

9. Regarding the incidence of burden, **Section 108** provides that:-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

10. It is therefore clear that the burden to prove that that receivership against the Plaintiff ceased on 20th August, 2014 and that documents thereof had been filed lies with 1st, 2nd and 3rd Defendants in the original action and not either on the Applicant or the Interested Party.

DISPOSITION

11. Consequently, I have come to the conclusion that the notice of motion dated 10th October, 2018 is without merit and it is dismissed. The Applicant will bear its own costs of the application

DELIVERED AND SIGNED AT KISUMU THIS 13th DAY OF *December* 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Appellant - Mr Mungai

Respondent - N/A