



REPUBLIC OF KENYA



**Vinayak v African Banking Corporation (Civil Case E112 of 2025)
[2025] KEHC 15039 (KLR) (Civ) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E112 OF 2025**

NW SIFUNA, J

OCTOBER 23, 2025

BETWEEN

ADARSH VINAYAK PLAINTIFF

AND

AFRICAN BANKING CORPORATION DEFENDANT

RULING

1. The Plaintiff an elderly woman has filed this suit claiming monies supposedly on Account Nos. 00110000xxxxx and 0013000010xxxx. Which funds she claims now belong to her under the right of survivorship following the death of her son Sudhir Vinayaki with whom she claims she holds the said Bank Accounts jointly. She has stated that the said funds which were on a fixed deposit Account are now Ksh 51,308,871=.
2. She instituted this suit vide a Plaint dated 28th April 2015. Together with the Plaint, was an Application of even date. The same which was by Notice of Motion is seeking orders that of that money, the sum of Ksh 25,654,185= be released to her now in advance for medical expenses abroad.
3. The Application which is supported by her Supporting Affidavit sworn on 28th April 2025, has been opposed by the Defendant through the Replying Affidavit of Faith Nteere its Senior Legal Manager.
4. In that Affidavit the Defendant has controverted those facts and contended that the said funds were upon the Plaintiff's instructions transferred to another Account. The Bank has further denied that there is any right of survivorship arising or that the Plaintiff is entitled to those funds.



Analysis and Determination

5. The Application was argued orally. With each party making its oral submissions on it. I have perused the Plaintiff and also the Application (with its Supporting Affidavit), as well as the Defendant's said Replying Affidavit of its Faith Nteere. I have also distilled the parties' rival arguments.
6. From my analysis of the facts and the parties' rival submissions, I find that the fulcrum of this suit is on the issue of whether or not on the facts stated in the Plaintiff, there is a right of survivorship. This is the main fact in issue; and the backbone of this suit, and which this Court needs to finally determine at the end of the suit after taking all the evidence and hearing witnesses at the trial.
7. It will be premature for this Court to on this Application, and at this pre-trial stage of the suit, embark on determining this issue without taking evidence and hearing witnesses; and before this suit proceeds to trial.
8. That is not only for the reason that by so doing, this Court will be placing the cart before the horse, but also because by so doing, this Court shall be making a final determination at the interlocutory stage which is a pre-trial stage.
9. Courts should refrain from making final determinations or making final orders at the onset of a suit, or at its pre-trial stage, or on an interlocutory Application. Because if they were to do that, there will be nothing left for the trial, and there will be no need of the suit proceeding to trial thereafter. Final determinations and final orders ought to come at the tail end of the suit. Yet this is not what this Application is propounding.
10. For those reasons, this Application fails, and is hereby dismissed. With no order as to costs.
11. Given the old age and deteriorating health of the Plaintiff, I hereby order that the hearing of this suit be fast-tracked. Pre-trials be concluded within the next forty (40) days, and the hearing be fixed within the next One Hundred Twenty (120) days.

DATED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF OCTOBER 2025.

PROF (DR) NIXON SIFUNA

JUDGE

