

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**COMMERCIAL SUIT NO. E224 OF 2023**

**STANBIC BANK KENYA LIMITED.....**  
**.....PLAINTIFF**

**VERSUS**

**ORATA INTERNATIONAL LIMITED.....1<sup>ST</sup>**  
**DEFENDANT**

**JACOB IYADI WAMBULWA.....2<sup>ND</sup>**  
**DEFENDANT**

**MARY MUKHWANA SHIKANDA.....3<sup>RD</sup>**  
**DEFENDANT**

**RULING**

1. This is a Ruling on the Notice of Motion dated 18<sup>th</sup> March 2024 (also referred variously in the court record as dated 18<sup>th</sup> May 2024), brought by the Defendants. The application is brought pursuant to Article 35(1)(b) of the Constitution, Sections 1A, 1B, 3A and 22(a) of the Civil Procedure Act and Order 11 Rule 8 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The application sought that the Plaintiff/Respondent be directed to produce, make discovery on oath and deliver and/or avail copies of various documents listed in the Defendants' Notice to Produce dated 19<sup>th</sup> October 2023, namely;

- a) Valuation Reports for motor vehicle registration numbers KHMA 339K, KHMA 109H, KHMA 150K, KHMA 091K and Limestone Finesse Machine,
  - b) The Newspaper advertisement for the auction,
  - c) Copy of minutes of the auction,
  - d) Memoranda of sale for all motor vehicles,
  - e) Loan statements showing how the proceeds from the auction were utilized, and
  - f) A report from Leakey's Auctioneers on the fate of the Proclamation Notice.
3. The application also sought that there be stay of proceedings in the matter pending compliance, absent of which the suit should be struck out. It also sought for costs.
  4. The grounds are set out on the face of the application and are supported by the annexed affidavit of Jacob Iyadi Wambulwa sworn on **even date**. It was contended that the 1<sup>st</sup> Defendant/Applicant was advanced various facilities by the Plaintiff/Respondent which were secured by among others joint registration of the stated motor vehicles and the machine. That the Plaintiff was now seeking judgment against the Defendants in excess of Kshs. 68, 727,892.02. And further that the motor vehicles, on the instructions of the Plaintiff, were proclaimed by Leakey Auctioneers, then repossessed and later sold.
  5. The Defendants contend that the Plaintiff failed to disclose the valuation of the motor vehicles, the date of the auction, the selling price and the application of the proceeds towards

settling the loan, hence the issuance of the notice to produce and this application.

6. In response the Plaintiff opposed the application through the Replying Affidavit sworn by Elizabeth Mbugua its Manager - Partnerships on 11<sup>th</sup> July 2024. She avers that 1<sup>st</sup> Defendant and the Plaintiff entered in to a Hire Purchase Agreement and was advanced various facilities which were guaranteed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. That later the 1<sup>st</sup> Defendant breached the terms of the Hire Purchase Agreement by defaulting in repayment as a result of which the account fell into arrears.
7. It is contended for the Plaintiff that the only available documents were availed as attachments to the Replying Affidavit and that the rest of the documents in relation to the auction are not available.
8. The application was canvassed by way of written submissions. The Defendants/Applicants' submissions are dated 24<sup>th</sup> April 2025, and the Plaintiff/Respondent's submissions are dated 9<sup>th</sup> May 2025.

### **Analysis and determination**

9. Having considered the application, the response and the submissions filed by the parties, the issue for determination is whether the court should order discovery and production of the documents in possession of the Plaintiff.
10. Under **Section 22 (a)** of the **Civil Procedure Act** the court is vested with the authority to make discovery orders and similar directives. It provides:

***“Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence.”***

11. Therefore, the court has wide discretion powers in an application for discovery. That discretion ought to be exercised in a judicious manner and in the spirit of promoting fair access to justice.

12. The purpose of the discovery is to provide parties with the relevant documentary material during trial to assist the party in its case, which in turn allows a fair disposal of the suit. In **Oracle Productions Ltd v Decapture Limited & 3 others [2014] eKLR** the Court held that:

***“The true purpose of discovery is to level the litigation field, to expedite hearing, reduce costs and allow parties to gauge the case they will face at the trial.”***

13. In the **Halsbury’s Laws of England Vol 13, paragraph 1**, the importance of discovery of evidence is stressed thus:

***“The function of the discovery of documents is to provide the parties with the relevant documentary***

***material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.”***

14. When faced with such applications for discovery the Courts are guided by the relevance of the document(s) sought to be adduced in the pleadings. In the instant case the Defendants seek that the Plaintiff be ordered to produce and or avail copies of valuation reports it did, advertisement of an auction and the auction processes leading to the sale of the proclaimed and attached motor vehicles and a machine, and the application of the proceeds thereof.
15. The Plaintiff disputes the production and contends that a party can only disclose documents that are in their possession and depending on how relevant they are to the adverse party. It goes further to submit that in its Replying Affidavit it disclosed the following documents as sought - valuation reports for m/v KHMA 091K (EM-7), KHMA 339K (EM-8) and loan statements showing how the proceeds from the auction were utilized. The rest, it is submitted could not be provided for the

reason that some units were not repossessed as they were in a vandalized state and some documents requested were not in its custody as the sale was by public auction.

16. In my view, the fact that the sale of attached goods was by public auction in itself is not a ground for denial of discovery of documents that would aid the court in the just determination of the suit. After all the auctioneer was acting on the instructions of the Plaintiff.

17. The relevance of the documents sought arises from the Plaintiff's failure in providing the statement showing how the proceeds from the auction were utilized. The 1<sup>st</sup> Defendant has a right to ascertain as much in view of the amount now deemed to be due and outstanding. In my view, the 1<sup>st</sup> Defendant has laid a proper foundation in its claim requesting for the discovery of documents.

18. I am equally alive to the fact that parties have a right to access information as envisaged in Article 35(1) (b) of the Constitution, that:

***“Every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom.”***

19. In an application for discovery of documents the court's purpose is to aid a party to get documents crucial to their case, documents which are only within the custody of the opponent party. The Defendants have demonstrated that the requested documents are within, or at least ought reasonably to be

within, the possession of the Plaintiff. It is necessary for the Defendants to get a full disclosure of the documentary evidence, for the court to adjudicate the dispute in the suit. In my view, I am not persuaded that producing the said documents would prejudice the Plaintiff in any way, considering that the same came about as a result of an exercise which it commenced and authorized the auctioneers to proceed with.

20. In the foregoing I have come to the conclusion that the application dated 18<sup>th</sup> March 2024 has merit. I allow the same in the following terms:

***I. Within 14 days of this ruling, the Plaintiff is hereby directed to produce, make discovery on oath and deliver and/or avail copies of the documents listed in the Defendants' Notice to Produce dated 19<sup>th</sup> October 2023, namely;***

***a) Valuation Reports for motor vehicle registration numbers KHMA 339K, KHMA 109H, KHMA 150K, KHMA 091K and Limestone Finesse Machine,***

***b) The Newspaper advertisement for the auction,***

***c) Copy of minutes of the auction,***

***d) Memoranda of sale for all motor vehicles,***

***e) Loan statements showing how the proceeds from the auction were utilized, and***

***f) A report from Leakey's Auctioneers on the fate of the Proclamation Notice.***

***II. Costs of this application will abide the main suit.***

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **6<sup>th</sup>** day of **November** 2025.

**P.M. MULWA**

**JUDGE**

**In the presence of:**

*Mr. Kipkoech* for Plaintiff

*Mr. Ndegwa* for Defendants

Court Assistant: *Carlos*