



**Wanjiku v Family Bank Ltd & another (Commercial Case E530 of 2024)
[2025] KEHC 16223 (KLR) (Commercial and Tax) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E530 OF 2024
PM MULWA, J
NOVEMBER 6, 2025**

BETWEEN

IRENE WANJIKU PLAINTIFF

AND

FAMILY BANK LTD 1ST DEFENDANT

PETER NGUGI MURIAKIRA 2ND DEFENDANT

RULING

1. This ruling is in respect of two applications. The first is the Notice of Motion dated 4th September 2024 by the Plaintiff, and the second is the Notice of Motion dated 24th October 2024 by the 2nd Defendant.

The Plaintiff's application dated 4th September 2024

2. The Plaintiff seeks an injunction to compel the 1st Defendant/Respondent, its officers, employees, agents, representatives, nominees, and proxies to supply her with true and accurate monthly statements of account in respect of Account Number 046000015589 and Loan Account Number 001119494 held at Family Bank Limited, together with any other related loan accounts.
3. The Plaintiff's case is that she, the 2nd Defendant, and her late mother Florence obtained a loan facility of Kshs. 27,000,000/= in 2013, secured by property Dagorette/Kinoo/2530. Further facilities amounting to Kshs. 29,130,000/= were advanced between November 2022 and June 2023. The rental income from the charged property, amounting to about Kshs. 600,000/= monthly, was to be deposited into the said bank account.



4. She contends that since October 2023, the 2nd Defendant has impeded her access to the account and that the 1st Defendant has refused to supply statements despite her being a co-borrower and guarantor. She fears irregularities in loan repayments and misapplication of funds.
5. The 1st Defendant, through the replying affidavit of Joan Gachomba, Legal Services Manager, sworn on 11th October 2024, opposes the application, arguing that the bank is bound by confidentiality obligations, which restrict disclosure of customer information without the account holder's consent. The bank maintains that the Plaintiff is neither an account holder nor an authorized party entitled to access statements. The account was opened in 2012 by the 2nd Defendant and his late wife, Florence, and the Plaintiff was only added as a signatory in 2016. The 2nd Defendant subsequently instructed the Bank to remove her as a signatory via a letter dated 21st August 2024.
6. The 2nd Defendant, through his affidavit sworn on 14th October 2024, also opposes the application, asserting that the Plaintiff was never a co-borrower but merely a guarantor and a signatory introduced for convenience due to the advanced age of the principal account holders, himself and his late wife. He maintains that as guarantor, the Plaintiff's role does not extend to operating or demanding statements for the joint account. He argues that the Plaintiff has no right to demand account statements and that granting such an order would infringe his rights.
7. The application was canvassed by way of written submissions. The plaintiff's submissions are dated 31st October 2024, the 2nd Defendant's submissions are dated 13th November 2024, and the 1st Defendant's submissions are dated 6th November 2024

The 2nd Defendant's application dated 24th October 2024

6. This seeks a temporary injunction restraining the Plaintiff from accessing or withdrawing funds from Account Number 046000015589, and for an order directing the Bank to remove the Plaintiff as a signatory. It is premised on Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and Order 40, Rules 1 and 2 of the Civil Procedure Rules.
7. He avers that the account was opened by himself and his late wife, Florence, in 2012 and that the Plaintiff was added as a signatory only in 2016 due to their age. The 2nd Defendant depones that the Plaintiff has unlawfully withdrawn money from the joint account without his consent. He wrote to the Bank to remove her as a signatory, but the Bank required a court order owing to the existence of this suit.
8. The Plaintiff opposes the application, stating she no longer has access to the account since December 2023 and that the 2nd Defendant has failed to meet the threshold for an injunction as laid out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358.

Analysis and Determination

6. Having considered the pleadings, affidavits, and submissions, the issues for determination are:
 - i. Whether the Plaintiff has made out a case for an order compelling the Bank to furnish her with monthly statements.
 - ii. Whether the 2nd Defendant has met the threshold for a temporary injunction restraining the Plaintiff from accessing the account.
10. On the first issue, the Plaintiff's claim is premised on her alleged status as a co-borrower and guarantor. The 1st Defendant maintains that there exists no banker–customer relationship between it and the



Plaintiff and that the duty of confidentiality prohibits it from disclosing account information without proper authorization from the 2nd Defendant.

11. The relationship between a bank and its customer is contractual and founded upon confidentiality. This principle was succinctly articulated in *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461, where the Court held that a bank owes a duty of secrecy to its customer except in limited circumstances, namely where - (i) disclosure is under compulsion by law, (ii) there is a duty to the public to disclose, (iii) it is in the bank's own interests, or (iv) the customer has expressly or impliedly consented.
12. Similarly, in *Kenya Commercial Bank Ltd v Osebe* [1982] KLR 296, the Court of Appeal underscored that a bank owes a duty of confidentiality to its customer and may only disclose account information upon lawful authority or an order of the court.
13. The duty of confidentiality is also codified in statute. Section 31(2) of the *Banking Act* (Cap 488) provides that:

“No institution or its officers shall disclose customer information except in the performance of its duties, under compulsion of law, or with the consent of the customer.”
10. The Court of Appeal in *Barclays Bank of Kenya Ltd v Githua Kiarie & Another* [1988] eKLR emphasized that confidentiality is an implied term of the banker–customer contract, which exists so long as that relationship subsists.
11. The Plaintiff asserts that she is a co-borrower and guarantor, and therefore entitled to the statements. However, the documentary evidence produced before this Court shows that the account in question was opened by the 2nd Defendant and his late wife, Florence, and that the Plaintiff was subsequently introduced merely as a signatory. Being a signatory does not create a customer relationship with the bank. In *Stanbic Bank Kenya Ltd v Irenji Karobia Gacheru* [2020] eKLR, the Court held that a person who is merely a signatory but not an account holder or borrower cannot compel a bank to disclose account information.
12. The Plaintiff's role as a guarantor, standing alone, also does not confer an automatic right to inspect or obtain account statements unless such a right is expressly provided for in the facility agreement or consented to by the principal borrower. The rights of a guarantor are secondary and arise only upon default by the principal debtor.
13. Nonetheless, this Court takes judicial notice that the Plaintiff, as a guarantor and co-chargor of the security property, possesses a legitimate interest in ensuring that the loan facility secured by her property is properly serviced. As observed in *Kenya Commercial Bank Ltd v Osebe* (supra), a guarantor's obligations are co-extensive with those of the principal debtor, and such a party is entitled to such information as is necessary to ascertain whether the obligation has been discharged.
14. On the material before this Court, no documentary evidence has been produced to demonstrate that the Plaintiff is a co-account holder or that her name appears on the loan documentation as a borrower. The bank's records, as exhibited by the 1st Defendant, indicate that the account was opened solely by the 2nd Defendant and the late Florence, and that the Plaintiff's later inclusion as a signatory, subsequently revoked at the request of the 2nd Defendant, does not establish a proprietary or contractual entitlement to the monthly statements sought.
15. The principles governing the grant of a mandatory injunction were well articulated in *Kenya Breweries Ltd & Another v Washington Okeyo* [2002] EA 109, where the Court of Appeal held that such relief



should only be granted in clear and exceptional cases, where the court can feel a high degree of assurance that at trial it will appear that the injunction was rightly granted.

16. The Plaintiff's application falls short of these strict parameters. The bank's refusal to release statements in the absence of recognized customer status is consistent with its statutory and contractual duty of confidentiality under Section 31(2) of the *Banking Act*.
17. Consequently, the Plaintiff has failed to demonstrate prima facie right to the injunctive or mandatory orders compelling the bank to supply her with monthly account statements. Her entitlement, if any, would lie only to limited disclosure regarding the loan performance directly tied to her obligations as guarantor and chargor, not to the full operational statements of the account. In the absence of a prima facie case I need not look at the other limbs of granting an injunction as stated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
18. Accordingly, the Court finds that the Plaintiff's application for the production of monthly account statements lacks merit to the extent sought and must therefore be declined, for failing to demonstrate a proprietary or contractual right enforceable against the 1st Defendant.
19. In the premises, the Notice of Motion dated 4th September 2024 lacks merit and is hereby dismissed with costs to the 1st Defendant.
20. The second issue is whether the 2nd Defendant is entitled to an injunction. The principles governing the grant of injunctions are well settled in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, and were reaffirmed by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR. The applicant must establish a prima facie case, show irreparable injury, and if in doubt, the court will decide on the balance of convenience.
21. The 2nd Defendant alleges that the Plaintiff has unlawfully withdrawn funds from Account No. 046000015589. However, no documentary evidence, such as bank statements, withdrawal slips, or transaction logs, has been tendered to support this assertion. The Plaintiff, on the other hand, avers that her access to the account was terminated in December 2023 and that she has not operated the account since. In the absence of credible evidence of ongoing or imminent withdrawals, the allegation of misuse remains speculative and unsubstantiated.
22. As emphasized in *Nguruman Limited* (supra), the purpose of an interlocutory injunction is to preserve the subject matter in its existing state pending determination of the dispute. The 2nd Defendant has not shown that there is any current or impending threat to the funds in question. On this basis, no prima facie case has been established.
23. Further, to the extent that the 2nd Defendant seeks orders to restrain the Plaintiff permanently or to compel the Bank to remove her as a signatory, such orders are final in nature. It is trite law that a mandatory or final order should not be granted at the interlocutory stage unless the circumstances are clear, exceptional, and where the Court feels a high degree of assurance that the injunction would be rightly granted at trial. The present case does not meet that threshold.
24. The 2nd Defendant has also not demonstrated any irreparable harm that cannot be adequately compensated by damages. Should the Plaintiff be found to have withdrawn funds unlawfully, the same can be quantified and recovered. The balance of convenience therefore lies in maintaining the status quo until the main suit is heard and determined.
21. In view of the foregoing analysis, I find and order as follows:
 - i. The Plaintiff's application dated 4th September 2024 lacks merit and is hereby dismissed.



- ii. The 2nd Defendant's application dated 24th October 2024 equally fails for want of proof and is dismissed.
- iii. Each party shall bear its own costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Gikonyo for Plaintiff

Mr. Edwin Otieno h/b for Mr. Anzala for 1st Defendant

Ms. Katana h/b for Mr. Kithi for 2nd Defendant

Court Assistant: Carlos

