

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**

**CIVIL SUIT NO. E067 OF 2024**

**PHYILIS OSORO KEMUNTI.....PLAINTIFF**

**VERSUS**

**ABSA BANK KENYA PLC.....DEFENDANT**

**RULING**

1. This suit was filed by a plaintiff dated 26/03/2024 and amended on 10/06/2024. The plaintiff sought judgement against the defendant Absa Bank Kenya PLC and damages in their various subheads.
2. Additionally, the plaintiff sought an order directing the defendant to totally expunge and delete any historical reference to the plaintiff as a defaulter on the credit reference bureau and its own record arising from transactions on credit card account no. 151xxx547 issued to the Kenya Association of Manufactures. She also sought costs of the suit and interest.
3. The Defendant in its statement of defence dated 13/05/2024 answered to the allegations in the plaint and intimidated that it would raise a preliminary objection to allow the process by the credit reference bureau to be exhausted, before moving to court.

## **The Preliminary Objection (Po) Dated 25/10/2024**

4. The Defendants objection is based on the following:-

***That the court lacks jurisdiction to hear and determine the suit pursuant to provisions of Regulation 37(5) of the Banking (Credit Reference Bureau) Regulatory 2020 as read with Article 159 (2) of the Constitution of Kenya.***

Directions were issued that the PO would be determined by way of written submissions.

## **Defendants Submissions Dated 25/10/2024**

5. It is submitted that the suit was filed prematurely as the Credit Reference Bureau (CRB) has a dispute resolution mechanism provided under Regulation 37 (5) of the 2020 Regulations which prior to filing of the suit the plaintiff ought to have exhausted citing cases the following cases in support:-

***Kennedy Odhiambo Nyagudi v. Central Bank of Kenya & 3 Others [2013]eKLR; Anny Kagendo Mate v. Prime Bank Limited Credit Reference Bureau & Another [2013]eKLR; Daniel Gachanja Githaiga v. Credit Reference Bureau Africa Limited & 2 others [2013]eKLR and Kennedy Nyagudi V. Central Bank of Kenya [2013]eKLR;*** stating that the decisions across board is that before filing a suit against Credit Reference Bureaus, the doctrine of exhaustion must be invoked and exhausted resulting to the suits being struck out.

### **Plaintiff's Submissions Dated 2/04/2024**

6. In its submissions, the plaintiff states the cause of action is based on libel and defamation of character through the defendants action, that the CRB does not have jurisdiction to hear defamation cases citing the Defamation Act; and case law as hereunder:-

**Anne Jepkemboi Ngeny v. Joseph Tireito & Another [2021] eKLR; Attorney General & another vs. Andrew Maina Githinji & Another [2016] eKLR Letang v. Cooper [1964]2 ALL ER at 934.**

7. In addition, the Plaintiff submits that a PO should be founded upon a settled and crisp point of , upon undisputed facts leading to one but one conclusion, that the facts are incompatible with that point of law as stated in the Court of Appeal case of **Independent Electoral & Boundaries Commission v. Jane Cheperenger & 2 others [2015]eKLR.**

8. The Plaintiff therefore submitted that CRB does not have jurisdiction to hear matters as raised in the plaint citing holding to the said effect in **Gerase Maingi Ndonga v. Aar Credit Services Ltd & Metropole Credit Reference Bureau KEHC 5486 (KLR)** that invocation of the Regulation

35(5) cannot determine the dispute between the parties, the cause of action being defamation.

Also cited is **Washington Odera Sideka v. Githaiga Kamweuji & Scania East Africa Ltd [2018] eKLR** among others for the same proposition.

9. The plaintiff therefore has urged that the PO lacks merit and misconceived and should be dismissed with costs.

### **Analysis and determination**

Two issues arise for determination:-

- i. What is the cause of action in the suit as filed?*
- ii. Whether CRB has the requisite jurisdiction to hear and determine the suit.*

10. A cause of action is defined and quoted by the Court of Appeal in the case of **Anne Jepkemboi Ngeny (Supra)** thus:-

- a) "a cause of action is an act on the part of the Defendant, which gives the Plaintiff his cause of complaint"*
- b) "Every fact which it would be necessary for the Plaintiff to prove if traversed in order to support his right to the judgment of the court", - **Drummond Jackson v. Britain Medical Association [1970] 2WLR 688.***

c) *“A cause of action is simply a factual situation the existence of which entitles one person to obtain from court a remedy against another person”.*

11. To juxtapose the above-learned definitions of a cause of action with the Plaintiffs Pleading in the information held by CRB and the right to correct erroneous information, which provides for relief to any customer who is aggrieved by wrong and erroneous information. The Plaintiff failed to invoke CRB’s dispute mechanism in the first instant. However, it is the courts view that failure by the Plaintiff to invoke provisions of **Regulation 20** does not preclude her from moving to court as in my view, her complaint cannot be resolved by invocation of the Regulations, as it would appear to be the case by the Defendant.
12. The court does not agree entirely on the proposition by the defendant that the Plaintiff’s grievance fall entirely within provisions of the Regulations. This is so because looking at the Amended Plaint, the Plaintiff is not interested in the reliefs stated at the Regulations, which offer reliefs as access to information held by CRB and right to correct the erroneous information.

The reliefs sought by the plaintiff are substantive reliefs including injunctive orders and general damages under their various subheads under the Defamation Act.

These reliefs cannot possibly be available to a complainant at the CRB and regulations thereto.

13. It is evident that by the narration of events and the reliefs sought that the complaint by the Plaintiff against the defendant at para. 4, 5 6, 8, 15, 19 and 22 of the plaint is that at all material times the defendants listed her as a defaulter on the CRB under the stated company card, that the defendant failed to remove the erroneous listing and as a result she has suffered damage to her reputation, casting aspersions on her credit worthiness.

I need not replicate the reliefs sought here but suffice to state that the Plaintiff sought permanent injunction restraining the defendant from publishing or listing the plaintiff on CRB portal on the stated account; general damages for libel and exemplary and aggravated damages.

14. The regulation as stated in the **Kennedy Odhiambo Ngagudi (Supra)** are applicable to customers right of access to information from the CRB as held in the case **Gerrase Maingi Ndonga (supra)** invoke **Regulation 35(5)** that cannot determine the dispute between the parties herein, the main cause of action being defamation of the Plaintiff by the defendant.

15. **The upshot is that the Preliminary Objection dated 25/10/2024 fails. The suit as filed by the Plaintiff is**

**competently filed in this court. The PO is dismissed with costs to the Plaintiff.**

**Orders accordingly.**

**Delivered Dated and Signed at Nairobi this 30<sup>th</sup> day of January, 2026.**

.....  
**JANET MULWA.**  
**JUDGE**