



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ENVIRONMENT AND LAND CASE No. 615 OF 2013

NATHAN MUTUA KOLILE.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....1ST DEFENDANT

STEPHEN NZULA MULI T/A

GENERATION HIGHWAY ENTERPRISES.....2ND DEFENDANT

RULING

1. By Notice of Motion dated 11th June 2018, the plaintiff seeks an order compelling the 1st defendant to provide him with certified copies of the following documents in respect of loan account number 0310590630278: loan application by the 2nd defendant, letter of offer by the 1st defendant, letter of guarantee by the plaintiff, loan agreement, bank statement for the entire loan account, any other securities/guarantees pertaining to the loan account, any other necessary document/information pertaining to the entire transaction and details/particulars of any other accounts that the 2nd defendant operates with the 1st defendant.

2. The application is slated to be brought inter alia under **Section 179 of the Evidence Act and Order 11 Rule 3 of the Civil Procedure Rules**. It is supported by an affidavit sworn by the plaintiff. The 1st defendant opposed the application through 'Grounds of Objection' while the 2nd defendant did not respond to since according to it, the application concerns only the plaintiff and the 1st defendant.

3. Parties agreed and the court ordered that the application be canvassed through written submissions. The plaintiff/applicant duly filed submissions. The defendants did not. I have duly considered the application, the grounds of opposition and the submissions.

4. From the material placed before the court, it is apparent that the plaintiff served upon the advocates on record defendants a Notice to Produce dated 16th March 2018. The notice required the defendants to produce the documents listed therein, which are the same documents listed in the present application. The 1st defendant's advocates responded to the notice through their letter dated 23rd March 2018. They stated that the 1st defendant could not avail the documents since doing so would be in breach of bank-client confidentiality. They added that they could only release the documents with the express authority of the 2nd defendant, which authority they did not have.

5. It is important to note that the relationship between the parties herein is that the 1st defendant bank advanced to the 2nd defendant a loan facility which was secured by a charge over a property owned by the plaintiff. The plaintiff was both a chargor and a guarantor in the transaction. It is thus clear that the parties are closely related by virtue of the lending transaction.

6. The reason that the 1st defendant has given for not releasing the documents is confidentiality owing to banker-customer relationship between it and the 2nd defendant. The 1st defendant has neither filed a replying affidavit nor submissions to demonstrate how the said confidentiality applies considering that all the parties to the transaction are parties to this suit. The 2nd defendant whose supposed right to confidentiality the 1st defendant seeks to uphold has distanced itself from the application. In these circumstances, I do not see why the applicant should be kept from the orders sought. It is not disputed by any of the respondents that the documents are needed for use in this litigation. I am therefore persuaded that the applicant has made a case for granting the orders sought in terms of prayer 2 (a) to (e) of the application. I however find the prayers listed as 2 (f) to (h) to be too generalised and I will therefore not grant those.

7. In the end, the 1st defendant is hereby ordered to provide to the plaintiff certified copies of the following documents in respect of loan account number 0310590630278:

a) loan application by the 2nd defendant

b) letter of offer by the 1st defendant

c) letter of guarantee by the plaintiff

d) loan agreement

e) bank statement for the entire loan account

8. Costs of the application are to the plaintiff.

9. Ruling herein was to be delivered on 5th June 2019 but was delayed since on that date I was attending an annual conference of the judges of this court. The dates of the conference were scheduled after the date of delivery of this ruling was fixed. The delay is regretted.

Dated, signed and delivered in open court at Nakuru this 26th day of June 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for plaintiff/applicant

Mr Ikua for 1st defendant/respondent

Mr Karanja Mbugua for 2nd defendant/respondent

Court Assistants: Beatrice & Lotkomoi