

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC CAUSE NO. 2232 OF 2017

(Before Hon. Lady Justice Hellen Wasilwa, J)

PAUL NJAGA KIHARA.....
.....CLAIMANT

V

CHASE BANK (KENYA) LIMITED
(IN RECEIVERSHIP).....1ST
RESPONDENT

KENYA DEPOSIT INSURANCE
CORPORATION.....2ND
RESPONDENT

AND

KANG'E SAITI (being the appointed
executor of the Claimant's Estate).....PROPOSED
CLAIMANT

AND

SBM BANK (KENYA) LIMITED.....PROPOSED 1ST
RESPONDENT

RULING

- 1 The Proposed Claimant/Applicant filed a Notice of Motion dated 12th November 2025 seeking orders that: -
- 1) *Spent*
 - 2) *THAT this Honourable Court be pleased to substitute the Claimant, PAUL NJAGA KIHARA, who*

is now deceased with the Executor of his estate, KANG'E SAITTI, for the purpose of pursuing and execution of the Decree and Certificate of Costs.

- 3) *THAT this Honourable Court be further pleased to substitute the 1st Respondent, CHASE BANK (KENYA) LIMITED (IN RECEIVERSHIP) with SBM BANK (KENYA) LIMITED, the 1st Respondent's assets and liabilities having been irrevocably transferred to the proposed 1st Respondent.*
- 4) *THAT costs of his Application be provided for.*

Claimant/Applicant's Case

- 2 The Applicant avers that judgment in this matter was delivered on 2nd November, 2018 in favour of the Claimant with costs and interest accruing from the date of judgment.
- 3 It is the Applicant's case that the Claimant, Paul Njaga Kihara, died on 21st September, 2023 before being issued with the Decree and Certificate of Costs and before execution could be undertaken. Subsequently, Kang'e Saiti was appointed Executor of the Claimant's Estate vide Gazette Notice No. 2778 in Milimani HCPF & A No. E1446 of 2023.
- 4 The Applicant further avers that the 1st Respondent's assets and liabilities were irrevocably transferred to the

proposed 1st Respondent pursuant to Gazette Notice No. 6833 Vol. CXX No. 79 of 6th July, 2018.

- 5 It is contended that issuance of the Decree and Certificate of Costs and execution thereof cannot proceed without substitution of the deceased Claimant with the Executor of his Estate and substitution of the 1st Respondent with the proposed 1st Respondent.
- 6 The Applicant avers that the Estate is desirous of proceeding with execution so as to enjoy the fruits of the judgment, and unless substitution is effected, the Estate will be unable to do so.
- 7 The Applicant contends that no prejudice will be occasioned to the Respondents if the orders sought are granted and that the same are in the interest of justice.
- 8 In response to the proposed 1st Respondent's assertions, the Applicant avers that although all liabilities were assumed, it is a matter of public record that the proposed 1st Respondent took over certain assets and liabilities of the 1st Respondent, including those giving rise to the present claim.
- 9 The Applicant further avers that Order 1 Rule 10(2) of the Civil Procedure Rules empowers the Court to order substitution of parties whose presence is necessary for the effective and complete adjudication of the dispute. The purpose of substitution is to ensure that the entity which

assumed the relevant obligations is properly before the Court, thereby avoiding multiplicity of suits.

- 10 The Applicant disputes the assertion that liabilities relating to former employees were not assumed and avers that the claim herein arises from breach of contractual obligations under a Mutual Separation Agreement, which obligations were assumed by the proposed 1st Respondent.
- 11 It is the Applicant's case that substitution of the proposed 1st Respondent is necessary to ensure that the judgment and its enforcement are directed at the proper entity, as the 1st Respondent is no longer operational. Failure to effect substitution would render the proceedings nugatory.
- 12 The Applicant therefore prays that the Court allows the application for substitution of the deceased Claimant with the Executor of his Estate and substitution of the 1st Respondent with the proposed 1st Respondent, as no prejudice will be suffered by the Respondents.

Proposed 1st Respondent's Case

- 13 In opposition to the Application, the proposed 1st Respondent filed a replying affidavit dated 21st January 2026 sworn by its Director Human Resources, Simon Maina.

- 14 The Proposed 1st Respondent avers that the suit proceeded to hearing and judgment was delivered on 2nd November, 2018 without its involvement, thus it remains a stranger to the suit, the Claimant, and the Claimant's Estate.
- 15 It avers that the Applicant's supporting affidavit fails to place before the Court full and accurate information regarding the transaction between SBM Bank (Kenya) Limited and Chase Bank (Kenya) Limited (in Receivership), and instead seeks to improperly introduce the Proposed 1st Respondent into the proceedings.
- 16 The Proposed 1st Respondent contends that it did not acquire the entirety of the 1st Respondent's assets and liabilities, but only certain assets and liabilities as specified in the relevant Gazette Notice. Further, the said Gazette Notice clarifies that the residual assets and liabilities of the 1st Respondent remained vested in the Kenya Deposit Insurance Corporation as Liquidator, thus confirming that the two entities remain distinct legal persons.
- 17 The Proposed 1st Respondent avers that the Claimant's Estate ought to pursue the 1st Respondent, which remains the legal entity with respect to the residual liabilities, and not the Proposed 1st Respondent. The transaction in question was a matter of public record as early as 2018,

and the Claimant, having been aware of the same, made no effort to enjoin the Proposed 1st Respondent in the proceedings at the time.

- 18 It is the Proposed 1st Respondent's case that the present application is a belated attempt, made over six years after the transaction, to improperly introduce it into the suit as a judgment debtor.
- 19 The Proposed 1st Respondent further avers that the transfer of certain assets and liabilities does not amount to a blanket assumption of all liabilities, and in particular denies having assumed liabilities relating to former employees of the 1st Respondent.
- 20 It is contended that substitution under Order 24 of the Civil Procedure Rules does not contemplate substitution of a financial institution under liquidation with another entity that was not a party to the proceedings leading to judgment. The Proposed 1st Respondent asserts that it cannot be substituted as a judgment debtor in law where it was not a party to the suit and would thereby be denied its constitutional right to a fair hearing under Article 50(1) of the Constitution.
- 21 The Proposed 1st Respondent maintains that the application is incompetent, misconceived, and an abuse of

the Court process, and prays that it be dismissed with costs.

22 The Proposed 1st Respondent further filed Grounds of Opposition dated 19th December 2025 on the following grounds:

- 1. The Application has been made with undue delay since the alleged transfer of certain assets and certain liabilities were vide a gazette notice dated 6th July 2018 which is seven (7) years ago.*
- 2. No cause of action has been demonstrated by the Plaintiff as against the Proposed 1st Respondent.*
- 3. The Application is incompetent and a waste of judicial time as the proposed 1st Respondent was not a party during the main hearing of the claim.*
- 4. The proposed 1st Respondent has a Constitutional right to fair hearing under Article 50(1) of the Constitution of Kenya 2010.*
- 5. The proposed 1st Respondent cannot be substituted as a judgment debtor in law when it was not a party during the main hearing of the suit.*
- 6. The proposed 1st Respondent assumed certain assets and certain liabilities but certainly not former Chase Bank employees dues.*

Claimant/Applicant's Submissions

23 It was submitted that at the time of filing this suit in November 2017, Chase Bank (Kenya) Limited was under

receivership. Gazette Notice No. 6833 Vol. CXX No. 79 of 6th July 2018 confirms that certain assets and liabilities of Chase Bank (in Receivership) were approved for transfer to SBM Bank (Kenya) Limited.

- 24 The Applicant submitted that in light of the said transfer, substitution of the 1st Respondent with the Proposed 1st Respondent is necessary to reflect the change in circumstances and to enable the Court effectually determine the matter. Reliance was placed on Order 1 Rule 10(2) of the Civil Procedure Rules, which empowers the Court to substitute parties whose presence is necessary for the complete adjudication of the issues in dispute.
- 25 It was further submitted that the Applicant discharged the initial evidentiary burden by producing the Gazette Notice wherein the Central Bank of Kenya and Kenya Deposit Insurance Corporation with the endorsement of the Cabinet Secretary of the National Treasury and Planning “.....approved the transfer of certain assets and assumptions of certain liabilities of Chase Bank (Kenya) Limited (In Receivership) to SBM Bank (Kenya) Limited”. In this regard, reliance was placed ***Nderitu v Real Management Services (2002) Ltd & another [2024] KEHC 12254 (KLR)***, where the Court held: “From the above, it is evident that the Appellant, being the plaintiff in the lower court, had the initial legal and

evidentiary burden to prove her case on a balance of probability against the Respondents.”

- 26 The Applicant submitted that upon discharge of this burden, the evidentiary burden shifted to the Proposed 1st Respondent to demonstrate that the Claimant’s judgment debt was not among the liabilities assumed. Section 112 of the Evidence Act places the burden on the party with special knowledge of the facts. The Proposed 1st Respondent has produced no evidence to refute its liability with regard to the Claimant’s judgment debt.
- 27 He submitted that Courts have repeatedly recognized SBM Bank’s assumption of Chase Bank’s obligations. In ***Chi Motors Limited v SBM Bank (K) Limited; Kenya Deposit Insurance Corporation (Third party) [2024] KEHC 6349 (KLR)***, wherein the Court emphasized updating pleadings to reflect Chase Bank’s substitution by SBM Bank and stated: *“However, it would be imperative to note that at all material times the Appellant’s case was as against Chase Bank Ltd however a perusal of the record and Case Tracking System (CTS), no requisite motion was placed before this Court to effect the change of circumstance to reflect that the Chase Bank Ltd was substituted by SBM Bank Ltd as indicated in the respective parties’ current pleadings.”*
- 28 The Applicant further submitted that in ***Lake Naivasha Crescent Camp Limited v SBM Bank (K) Limited The***

Successor of Chase Bank (K) Limited (In Liquidation) (for this Account) [2025] KEHC 14914 (KLR) the Court held: *“This court having carefully perused clause 44.2 of the charge instrument, the gazette notice dated 6th July 2018 and the Central Bank of Kenya (CBK) press release dated 20th August 2018, notes that indeed the defendant/applicant acquired and assumed certain assets and liabilities of Chase Bank (K) Ltd (in Receivership). This court is of the view that the presence of the defendant/applicant will assist the court to adjudicate the matters before it and also save the precious judicial time in the interest of justice.”*

- 29 The Applicant submitted that the Proposed 1st Respondent has opposed the substitution on the ground that it assumed certain assets and liabilities, but not former Chase Bank employee’s dues. Reliance was placed on **Terry Njagi Muia v Chase Bank (Kenya) Limited & 2 others [2019] eKLR**, where the Court held: *“However on my own motion, and in view of the fact that the SBM Bank (Kenya) Limited is the person acquiring the respondents assets, I am of the view that she is a necessary party in this case. I therefore order that SBM Bank (Kenya) Limited be enjoined to this suit as the 2nd Respondent.”*
- 30 It was therefore submitted that the 1st Respondent is no longer operational and that substitution is necessary to

ensure that the judgment and its enforcement are directed at the proper entity, failing which the proceedings would be rendered nugatory.

- 31 On costs, it was submitted that under Section 27 of the Civil Procedure Act dictates that the costs of the suit should follow the event, and the Applicant, having successfully prosecuted this Application, should be awarded costs.

Proposed 1st Respondent's Submissions

- 32 The Proposed 1st Respondent submitted that the application must fail since an institution under Liquidation/Receivership is managed in accordance with the Kenya Deposit Insurance Act Cap 487C Section 6 (c) of the said Act provides that the corporation shall have power to settle or compromise any claim by or against the corporation.
- 33 It was submitted that the Proposed 1st Respondent did not acquire all Chase Bank (Kenya) Limited (In Liquidation) assets and liabilities. The gazette notice speaks for itself that the only certain liabilities and assets but certainly not the Claimants claim.
- 34 The Proposed 1st Respondent submitted that the 2nd Respondent, who participated in the proceedings, did not

at any point indicate that the Claimant's claim had been transferred to or assumed by the Proposed 1st Respondent.

35 It also submitted that Sections 1A, 1B and 3A of the Civil Procedure Act only provides for just expeditious determination of proceedings and not prejudice to parties. There can be no justice when the matter is concluded up to judgement without participation of the Proposed 1st Respondent.

36 It is the Proposed 1st Respondent's submission that the Court of Appeal in Kenya Deposit Insurance Corporation spelt out the position that specialized institutions like the 1st Respondent must be allowed to carry out their statutory mandate. It cited **Kenya Deposit Insurance Corporation v Richardson & David Limited & another [2017] eKLR** *"The Constitution has bestowed the mandate on Parliament to enact statutes to create bodies to manage and regulate such institutions. The KDI Act and the Central Bank of Kenya Act (CBK Act) are Acts of Parliament which have vested and entrusted CBK and KDIC with powers to regulate the financial sector. Pursuant to the provisions of the said Acts, KDIC carried out its mandate and recommended liquidation of DBK. It exercised its discretion. The orders issued by the court clearly show that the court took up the role of CBK and KDIC. That is not the province of a Judge. As correctly pointed out by Odunga J in Republic v. KRA expert Interactive Gaming & Lotteries Ltd Misc Civil Application*

*251 of 2014, “specialized bodies created by statute ought to be given leeway to conduct their proceedings freely.... where such bodies act within their jurisdiction the court ought only step in to ensure that the proceedings are conducted fairly.” The jurisprudence that has developed in this area of the law shows that when decisions of public bodies are impugned, the court is only entitled to investigate the action complained of with a view to seeing whether the public body “has taken into account any matters that ought not to be taken into account or disregarded matters that ought to be taken into account. The court cannot interfere as an appellate authority to override a decision of such an authority, but only as a judicial authority concerned to see whether it has contravened the law by acting in excess of its power. “(see *Associated Provincial Picture Houses, Limited versus Wednesbury Corporation* [1948] 1 KB 223).”*

- 37 The Proposed 1st Respondent submitted that the Court cannot rewrite a contract between parties by purporting to transfer liability from Chase Bank (Kenya) Limited (in Liquidation) to the Proposed 1st Respondent. Reliance was placed in ***National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] eKLR:***

“Having directed himself so far quite properly, the learned judge proceeded to assume (when there was no basis for such an assumption) that the appellant bank would be willing to waive some of the interest

charged. Stepping into the shoes of the appellant bank the learned judge decided that a large part of the interest would or could be waived. This, in our view, is a serious misdirection on the part of the learned judge. A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.”

- 38 I have considered all the averments and submissions of the parties herein. I have considered the 1st limb of the application where the applicant wishes to substitute the claimant with the administrator of his estate in order to conclude this claim.
- 39 I find no prejudice in substituting the claimant with the administrator the claimant having passed on. The application to substitute the applicant with the administrator of his estate one Kange Saitti is allowed accordingly.
- 40 As concerns the issue of substitution of the 1st respondent with SMB Bank (Kenya) Limited, the proposed 1st Respondent is opposed to the substitution averring that there is no evidence in court regarding the transaction between SBM Bank (K) Ltd and Chase Bank (Kenya) Ltd (in

receivership). The proposed 1st respondent aver that they did not acquire the entirety of the 1st respondents assets and liabilities but only certain assets and liabilities as specified in the relevant gazette notice.

41 I have looked at the attached gazette notice No. 6833 of 5/7/2018 which transferred assets and liabilities of Chase Bank Ltd (in receivership) to SBM Bank (K) Ltd which states as follows:

- (a) *the Board of Directors of the Kenya Deposit Insurance Corporation (Receiver Manager of Chase Bank (Kenya) Limited (In-Receivership)) vide a resolution passed on the 9th April, 2018 and 11th May, 2018, approved the transfer of certain assets and certain liabilities of Chase Bank (Kenya) Limited (In-Receivership), pursuant to the Agreement for the transfer of certain assets and the assumption of certain liabilities dated the 17th April, 2018,*
- (b) *the shareholders of SBM Bank (Kenya) Limited vide a resolution passed on the 13th April, 2018, approved the acquisition of certain assets and assumption of certain liabilities of Chase Bank (Kenya) Limited (In-Receivership) as per the agreement for the transfer of certain assets and the assumption of certain liabilities dated the 17th April, 2018,*
- (c) *the Cabinet Secretary for the National Treasury and Planning has approved the transfer of certain assets and assumption of certain liabilities of Chase Bank (Kenya) Limited (In-Receivership) to SBM Bank (Kenya) Limited; and*

(d) the acquisition, transfer and assumption shall take effect on the 17th August, 2018.

- 42 From the gazette notice the assets and liabilities transferred are not indicated. It is however true that both the Kenya Deposit Insurance corporation (receiver Manager of Chase Bank (Kenya) Ltd (in receivership and SBM Bank (K) Ltd now both hold all the assets and liabilities of Chase Bank Kenya Ltd (in receivership) is one portion or another.
- 43 It is for this reason that the said SBM Bank (K) Ltd should be part of these proceedings in order to defend this suit given the fact they part own the previous assets and liabilities of Chase Bank.
- 44 Once the 2 respondents agree on how to share the liabilities and which they have not disclosed to court, this claim can be resolved. It would be in the interest of justice therefore to allow the substitution of SBM Bank (K) Ltd in place of Chase Bank Kenya Ltd (in receivership) as prayed.

Costs shall be in the cause.

**Dated, Signed and Delivered Virtually at Nairobi
this 9th Day of April, 2026.**

HELLEN WASILWA

JUDGE