



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Expert Portfolio Management Limited & 2 others v Standard Group PLC (Civil Case E001 of 2025) [2025] KEHC 3747 (KLR) (Civ) (26 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3747 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE E001 OF 2025
LP KASSAN, J
MARCH 26, 2025

BETWEEN

EXPERT PORTFOLIO MANAGEMENT LIMITED 1ST PLAINTIFF
AVENTUS TECHNOLOGY LIMITED T/A LENDPLUS 2ND PLAINTIFF
NIMBLE GROUP KENYA LIMITED 3RD PLAINTIFF
AND
STANDARD GROUP PLC DEFENDANT

RULING

1. Before this Court is the Application dated 07.01.2025 by the Defendants/Applicants brought under, Section 3A of the *Civil Procedure Act* Cap 21, Order 39 Rule 8, and Order 50 Rule 1 of the Civil Procedure Rules 2010 seeking orders: -
 - i. Spent
 - ii. That the Defendant/Respondent, be compelled by an order of this court to deliver forthwith the MPESA statements in respect of the portfolios annexed herein purchased from the 2nd Plaintiff by the 1st and 3rd Plaintiffs.
 - iii. That the costs of this Application be borne by the Defendant.
2. The application is supported by the affidavit of Daisy Martha Nyaburwalla and is opposed by the Defendant through a replying affidavit dated 16th January 2025.



Issues for determination

i.

Whether the Plaintiffs have demonstrated a legal right to access MPESA statements from the Defendant.

ii.

Whether the Defendant is under a legal obligation to disclose such information.

iii.

Who should bear the costs?

Analysis and Determination

3. I have read the application, and response filed by the parties.
4. Before delving into the merits of the application herein, the court must address a preliminary but foundational issue: whether the application is supported by a substantive suit.
5. The Defendant correctly argues, and the court concurs, Thatthe Plaintiffs’ application, as filed, is not anchored upon any substantive plaint, originating summons, or petition. The application refers to "Civil Case No. E001 of 2025" but no such plaint or claim has been placed before this court as part of the record.
6. It is trite law Thatinterlocutory applications must be founded upon a pending suit. In the absence of such a suit, there is no framework upon which interim or interlocutory relief can be granted. The [Civil Procedure Act](#) and Rules contemplate applications as part of an existing suit—not as standalone instruments.
7. This position was discussed in the case of *Cresta Investments Limited v Gulf African Bank Limited & Another* [2020] eKLR, the court held:

“Moreover, an application for injunction under Order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.”
8. Similarly, in *Mbugua & another v Mbugua & 4 others (Miscellaneous Application E064 of 2023)* [2024] KEHC 2405 (KLR) (16 January 2024) (Ruling), the court observed:

“In this case, the court finds Thatthe Applicants have neither shown Thatexistence of special circumstances to warrant the issuance of the mandatory injunctive orders nor have they filed a substantive suit within which the interim injunctive orders can lie. In the absence of these two requirements, the application is devoid of merit and the same is hereby dismissed with costs to the Respondents.”
9. Further, Order 51 Rule 1 of the Civil Procedure Rules provides Thatall applications shall be by motion and shall state under what provision of law they are brought and the orders sought. But this presupposes Thatthere is an existing matter.
10. Therefore, in the absence of a plaint or other originating process, this application is fatally defective, improperly before the court, and is hereby struck out.



11. The Plaintiffs assert Thatthey need the MPESA statements to demonstrate "proof of disbursement" of loans to support their claims in court. In support, they attach previous decisions where such proof was deemed necessary (Exhibit DMN2). The Plaintiffs argue Thatthe refusal to furnish the records has hindered debt recovery and business operations.
 12. Under Section 348 of the *Companies Act*, a purchaser of business assets (such as a debt portfolio) may acquire the rights necessary to pursue those debts. However, such rights must be exercised in accordance with other applicable laws, including privacy legislation.
 13. The Defendant, a mobile money service provider, is bound by the Data Protection *Act, No. 24 of 2019*. Section 25 of the Act provides Thata data controller or processor must process personal data lawfully, fairly, and in a transparent manner. Section 30 further restricts disclosure of personal data unless consent is obtained or there is a legal obligation or court order.
 14. In its replying affidavit, the Defendant raises valid concerns Thatthe request seeks third-party data (i.e., the borrowers') without proof of their consent or a legal process authorizing such disclosure. It argues Thatcompliance without those protections would constitute a breach of its statutory obligations and customer privacy.
 15. An applicant cannot hastily seek discovery against Safaricom when they were the ones who disbursed the loan to customers. They have access to their own records and can directly request the account statement from Safaricom without requiring a court order, as the account belongs to them.
 16. Courts have affirmed in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment) Thatpersonal data must be protected from arbitrary access, even where a party claims commercial necessity.
 17. The Plaintiffs have not demonstrated Thatthey made formal discovery requests under the Civil Procedure Rules, nor have they provided any customer consent forms authorizing disclosure. While their commercial need is clear, a balancing of interests under Section 31 of the Data Protection Act—between the right to privacy and legitimate interests—requires more stringent justification than what has been furnished.
 18. The Plaintiff's remedy lies in proper pre-trial procedures, including issuance of third-party notices or summons for production under Order 11 Rule 3 of the Civil Procedure Rules, or by seeking consent from the borrowers.
 19. Accordingly, the application and entire suit are struck out with costs to the Defendant.
- It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

Gitau for the Applicant

No appearance for the Respondent

Carol – Court Assistant

