



**Rai v ABSA Bank (Kenya) PLC; Rai Investments Limited (Interested Party) (Commercial Suit E404 of 2023) [2025] KEHC 5302 (KLR) (Commercial and Tax) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5302 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL SUIT E404 OF 2023**

**A MABEYA, J**

**APRIL 30, 2025**

**BETWEEN**

**IQBAL SINGH RAI ..... PLAINTIFF**

**AND**

**ABSA BANK (KENYA) PLC ..... DEFENDANT**

**AND**

**RAI INVESTMENTS LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. This suit was instituted by the plaintiff against the defendant vide a plaint dated 12/7/2023. The plaintiff prayed for judgment against the defendant, for a declaration that his removal from the interested party's bank account mandate was unlawful and violated Articles 35, 46, and 47 of *the Constitution*, as well as section 2 of the *Banking Act*.
2. He further sought a declaration that his removal was invalid since no lawful resolution had been passed to authorize it. That an order do issue to compel the defendant to provide him and the interested party bank statements for the interested party from March 2023. Also sought, was a mandatory order to reinstate him as a signatory to the account mandate. In addition, he claimed general damages, special damages for expenses incurred in following up on his reinstatement, interest at 14% per annum on both claims and the costs of the suit.
3. The plaintiff's case was that, the defendant and the interested party had a banker-customer relationship for over forty years, with the interested party maintaining corporate accounts at the defendant's Industrial Area branch. That all necessary account opening documents and resolutions had been provided before the account was opened.



4. He stated that he was a director and shareholder of the interested party alongside Sarbjit Singh Rai and Jaswant Singh Rai, while Jasbir Singh Rai was only a shareholder. Having served in this capacity since 1978, he contended that all company decisions were made as per the Articles of Association and the Companies Act, through duly convened meetings, minutes and resolutions.
5. That in February 2023, he requested bank statements for the interested party from the defendant but was informed that he had been removed from the bank mandate. A search at the Companies Registry confirmed his director/shareholder status. That such a change required a directors' meeting and resolution which he maintained had never occurred.
6. His attempts to follow up with bank officials were ignored. On 24/3/2023, one Joseph Kanyua informed him that he was no longer on the mandate but refused to provide details. He claimed that the defendant's actions were unlawful and malicious. That the defendant falsely invoked customer due diligence despite his longstanding banking relationship.
7. He contended that the defendant removed him from the mandate without supporting documentation and failed to provide necessary documents to a representative of the interested party. That the defendant refused to conduct proper investigations into how his removal was executed despite having a duty to do so.
8. That under section 2 of the Banking Act, the defendant was only required to honor lawful instructions from the interested party which had to be communicated via official resolutions enclosed under a letterhead or email—neither of which had occurred. That the defendant's conduct violated Articles 47, 35 and 43 of the Constitution, which protect the right to fair administrative action, access to information and consumer rights.
9. In opposition to the suit, the defendant filed its statement of defence dated 19/10/2023. It admitted the existence of banker customer relationship between it and the interested party. That by a resolution dated 15/2/1992, the directors of the interested party resolved to open an account with Barclays Bank now Absa. That all bank statements were sent to the interested party through its registered address whether electronic or physical.
10. That the interested party was responsible for disseminating bank statements to its directors. That the plaintiff being a shareholder or director is immaterial since not all directors and shareholders are signatories of the accounts of companies. That directors and shareholders are supposed to seek information about company accounts from the company itself.
11. That the plaintiff was initially a signatory but the mandate changed between 1992 and 2008. That on 26/4/2008, the interested party issued the defendant with an appointment of banker's mandate to bank nominating a set of signatories which did not include the plaintiff. That the defendant by itself could not remove or add signatories in an account as it is just a banker performing customer's instructions. That the plaintiff did not sign the mandate dated 26/4/2008 and his recourse was with the interested party. That the defendant owed no duty of care to the plaintiff but the interested party.
12. At the hearing Iqbal Sing Rai (Pw1) adopted his witness statement as his evidence-in-chief and produced a bundle of documents as PExh1. He testified that in 2023, he requested the defendant to provide the interested party's bank statements but was informed that he could not access them as he was no longer on the bank mandate. However, the company registry records still reflected him as a director and shareholder in the interested party. He further stated that the defendant's acting CEO informed him that he had been removed from the mandate during a Know Your Customer (KYC) exercise. That no board resolution had been passed to effect such removal.



13. In cross-examination, he told the Court that in 1992, the interested party had five signatories who signed the mandate, but none of them was mandatory. He admitted that he did not raise the issue with the interested party. He acknowledged that according to the mandate, any two of the named persons could sign on behalf of the company and reiterated that a board resolution was necessary for any changes to the mandate.
14. When cross-examined by Mr. Oraro SC for the interested party, Pw1 stated that his action was against the bank and not the interested party. That the application for a mandate change had been accompanied by a resolution but argued that the second resolution did not impose any limitations on the instructions given to the bank.
15. Dw1, Joseph Kanyua, testified on behalf of the defendant. He adopted his witness statement dated 19/10/2023 as his evidence-in-chief and produced the defendant's bundle of documents as DExh1. He testified that at the inception of the account, the interested party had designated five directors as signatories. That the plaintiff had never been a mandatory signatory. That on 26/4/2008, the interested party applied for a change of mandate, nominating Tarlochan Sing Rai and Sarbjit Sing Rai as authorized signatories. This mandate directed the defendant to honor instructions from any two authorized directors of the interested party.
16. In cross-examination, he told the Court that in 1992, the defendant had 5 signatories to the account and the plaintiff was listed as number four. Under the mandate, any two directors could operate the account. That the resolution of 26/4/2008 did not alter the previous mandate but was supplied to the bank by the interested party to amend the prior arrangement.
17. The plaintiff submitted that his removal from the company's bank mandate was unlawful as it was not done through a board resolution, as required by the *Companies Act* and the company's Articles of Association. That decisions regarding company operations, including changes to the mandate, must be made through properly convened board meetings and since no such meeting took place, his removal was in contravention of the law. The plaintiff further contended that he had previously accessed company bank information as a signatory, but this was suddenly denied without due process prompting the filing of the suit.
18. That the defendant violated this agreement by allowing the account to be operated outside the terms of the 1992 mandate, which required a specific number of signatories. That no evidence had been presented to show that a valid resolution was passed to remove him from the mandate, nor was there an agreement allowing a single individual to operate the account on behalf of the interested party.
19. That as a director, the plaintiff had not participated in any board meeting where his removal from the mandate was discussed. The minutes and resolutions from the company secretaries, included in his bundle of documents, demonstrated that no such decision was made. Additionally, he pointed out that the defendant had gone ahead to process payments based on a single signature, which was contrary to the agreed mandate.
20. On the issue of reliefs sought, the plaintiff urged the court to declare his removal unlawful, as it violated Article 47 of *the Constitution*, which guarantees fair administrative action. That since the lawyer for the interested party had confirmed that the plaintiff had not been removed, the defendant's actions were motivated by malice and ill-will. That had the defendant acted in good faith, it would have corrected the error and provided the requested support instead of persistently refusing to comply with the law.
21. The defendant submitted that the suit was defective for failure to serve summons as per Order 5 rule 1. Counsel submitted that service of summons was a fundamental step that went to the jurisdiction of the Court to hear and determine the matter. The defendant further submitted that the plaintiff



lacked locus to institute the matter since the rightful party to institute the proceedings ought to be the interested party. That the plaintiffs cause of action was vested in the company and therefore the plaintiff did not have the standing to sustain the proceedings. That the cause of action ought to have been brought within 12 years

22. That the plaintiff was not a customer of the bank and the interested party who was the owner of the account had not raised any issue with the bank. That the bank owed a duty of care to its customer only. It was stated that the bank acted reasonably and in accordance with the instructions of the company.
23. In the supplementary submissions, the plaintiff submitted that the cause of action arose in 2023 when the plaintiff was denied bank statements. That Dw1 had admitted that the defendant had made a mistake by allowing one director to operate the account. Relying on the Supreme Court decision in *Gaciani & Others vs. Kimanga & Anor* [2023] KESC 23 (KLR) (CIV) (21 April 2023), the plaintiff submitted that the defendant's submissions should be struck out for having been filed out of time.
24. It was also submitted that the suit was not a derivative one. The prayers sought were meant to enforce the provisions of the law for the wrongs done by the defendant. That there was no evidence that any resolution was made to change the bank mandate in 2008. That the issue of non-issuance of the Summons is irrelevant as the defendant had participated in the proceedings. The case of *Patrick Omondi Opiyo t/a Dallas Pub vs. Shaban Keah & Another* [2018] Eklr was cited in support of those submissions.
25. I have considered the pleadings, the evidence and the submissions on record. There are three issues for determination, namely, whether the plaintiff's suit is competent, whether the plaintiff has made out a case for violation of a banker customer relationship and whether the plaintiff is entitled to the orders sought.
26. On the first issue, the defendant challenged the competency of the suit on three fronts; on account of failure to issue summons, statutory limitation of time and locus to institute the suit.
27. On service of summons, the defendant submitted that the suit was incompetent and ought to be struck out for the plaintiff had failed to comply with the required procedure. Order 5 Rule 1 of the said Civil Procedure Rules provides for the issue and service of summons as follows: -

“1(1) When a suit has been filed a summons shall issue to the defendant ordering him to appear within the time specified therein.”
28. The purpose of summons to enter appearance is to notify a defendant of the institution of the suit in order to give him an opportunity to appear and answer the plaintiff's claim. That is the sole purpose of a Summons. In this regard, if a defendant comes to know of the existence of the suit and appears, the failure to issue and serve Summons does not invalidate the subsequent proceedings.
29. In *Industrial and Commercial Development Corporation v Sum Model Industries Limited* [2007] eKLR, the Court of Appeal held: -

“... whether or not a valid summons to enter appearance was served on the appellant does not, on the facts and circumstances of this case, vitiate the proceedings subsequent to such service. The appellant without any hesitation or protestation filed a written statement of defence and participated in the proceedings of the case without any complaint.”



30. Further, in *Diamond Trust Bank Kenya Limited v Maingi & another* (Civil Appeal 58 of 2016) [2023] KECA 712 (KLR) (9 June 2023) (Judgment), the Court of Appeal held: -
- “It is our considered view that, where a defendant has entered appearance or appointed counsel, and has proceeded to file a defence to the suit without protest, the purpose of the summons is spent or considerably diminished, and that any defect in the summons must be considered as having been waived or acquiesced by the defendant. Subsequently, the defendant cannot be heard to complain about delay or failure by the plaintiff to serve summons to enter appearance. It is vain pedantry to do so.”
31. From the foregoing, the invalidity of a Summons has to be determined on a case by case basis. This Court acknowledges the importance of service of summons in ensuring procedural fairness. However, while it is undisputed that the plaintiff did not effect service of summons upon the defendant, the Court notes that the defendant was fully aware of the suit. It appeared and actively participated in the proceedings by filing a notice of appointment and subsequently responding to the plaintiff’s application. It also filed a defence on the basis of which it defended the suit.
32. In this regard, nothing turns on this objection as the defendant fully participated in the proceedings without objection.
33. The second objection was that the suit was statute barred. That since the plaintiff was complaining on acts done in 2008, the suit should have been filed within 6 years. That the claim became statute barred after 2014. On his part, the plaintiff contended that he only discovered that he had been removed from the bank mandate when the defendant refused to serve him in 2023. That time therefore started to run in 2023.
34. In *Letang v Cooper* [1964] 2 All ER 929 at 934, Lord Diplock held: -
- “A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”
35. From the evidence on record, it is clear that before 2023 the plaintiff had not requested for any information from the defendant and it was denied. It is only in 2023 that when he requested for the statement of accounts for the interested party that the defendant refused to disclose or supply him with the same. In view thereof, I hold and find that the wrong complained of arose in 2023. The cause of action therefore arose in 2023 and the matter was not time barred as contended by the defendant.
36. The 3<sup>rd</sup> challenge was that the plaintiff lacked locus standi to institute the suit. This challenge goes hand in hand with the second issue of whether the plaintiff did make out a case of violation of a banker customer relationship.
37. The core dispute in this case is the change of mandate in 2008 which had the effect of removing the plaintiff as a signatory in the interested party’s bank account held by the defendant. The plaintiff’s gravamen is that the defendant should not have changed the mandate without a resolution by the company. That the defendant further allowed payments to be made on the strength of a single signature.
38. On its part, the defendant contended that it did not have any contractual relationship with the plaintiff rather, its contractual commitment was with the interested party. The defendant further stated that it acted reasonably and in accordance with the instructions of the interested party.



39. In *Equity Bank of Kenya & Another v Robert Chesang* [2016] eKLR, the Court held that: -

“A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to operations with its contracts with its customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with the customer. Thus, the duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer ... The bank/customer relationship is based on utmost good faith. The bank is also under a contractual duty to diligently handle accounts of a customer, to ensure that funds deposited on account are available when required by the customer. Any deviation from that understanding without justifiable reasons which should be communicated to the customer well in advance or immediately, the bank is in breach of a contract with the customer and is liable in damages.”

40. In *Co-operative Bank of Kenya Ltd v Biwott (Civil Appeal 18 of 2019)* [2022] KEHC 9946 (eKLR), the court held that: -

“The bank-customer relationship is contractual in nature and imposes a duty on the bank to exercise reasonable care and skill in its dealings with the customer ... A bank has a duty under its contract with its customer to exercise “reasonable care and skill” in carrying out its part with regard to operations within its contract with its customer. The standard of that reasonable care and skill is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all the relevant facts, which can vary almost infinitely.”

41. It is therefore clear that, the duty of care arises from the banker-customer relationship that exist between a bank and its customer. The duty of care can only arise where such a contractual relationship exist.

42. In the present case, it is not in dispute that there existed and continue to exist, a contractual banker-customer relationship between the defendant and interested party. It is not in dispute that there existed a particular bank mandate given to the defendant by the interested party. However, that mandate was changed between the years 1992 to 2008 whereby the plaintiff was removed as a signatory. Based on the resolution of 15/02/1998, any two directors could operate the account.

43. However, from the documents on record, the change of mandate dated 26/4/2008 did not have the plaintiff's name. It is the one which removed the plaintiff from the mandate. The record shows that this mandate was accompanied by a resolution dated 26/4/2008 which in part read, “the above resolution did not limit the instructions of the bank contained in any mandate given by the company.”

44. The defendant's case was that those documents emanated from the interested party. The interested party did not deny them nor challenge them. The defendant contended that it acted within the mandate by effecting the instructions that came from its customer, the interested party.

45. From the evidence on record, it is clear that it is the interested party who was the defendant's customer. The plaintiff was merely a director and shareholder of the defendant. The defendant owed the interested party a duty of care as its customer. There was absolutely no contractual relationship between the plaintiff and the defendant inter-se. The plaintiff was simply a director and shareholder of the defendant's customer. He could not have any rights independent of the interested party.

46. The plaintiff submitted that the current suit was not a derivative suit. That being the case, what cause of action would the plaintiff have against the defendant independent of the interested party? I see none.



The plaintiff did not demonstrate that the defendant acted outside the instructions of its customer, the interested party. A bank's duty is to follow the mandate given to it by its customer and, in the absence of proof that the mandate was altered unlawfully or without proper authorization, the Court finds no fault on the part of the defendant.

47. Further, a bank is required to exercise reasonable care and skill when executing its customer's instructions. In this instance, the defendant acted in accordance with a resolution provided to it by the interested party and no evidence has been tendered to suggest that it failed to meet the requisite standard of care.
48. Additionally, the Court is of the view that the plaintiff, in his capacity as a director, cannot assert an individual claim against the bank for actions taken based on the company's instructions. Any challenge regarding the validity of the resolution altering the mandate should have been pursued internally within the company and among its directors. The proper recourse for the plaintiff, therefore, would be to address the matter within the interested party's framework and not seek to pursue the defendant independently as he sought to do.
49. In light of the foregoing, the Court finds that the defendant lawfully effected the change of mandate in accordance with the company's resolution and there is no basis to hold the bank liable for any alleged wrongdoing.
50. In this regard, I do not find that the plaintiff has made out a case against the defendant and is therefore not entitled to the orders sought. The plaintiff's suit against the defendant is therefore without merit and is dismissed with costs to the defendant. No costs to the interested party as it is the cause of all the confusion that befell the plaintiff.

It is so decreed.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

