



**Lemerketo v Ecobank Kenya Limited & another; Central Bank
of Kenya (Interested Party) (Commercial Case E324 of 2022)
[2025] KEHC 11411 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E324 OF 2022**

PM MULWA, J

JULY 31, 2025

BETWEEN

ROBERT LEMERKETO PLAINTIFF

AND

ECOBANK KENYA LIMITED 1ST DEFENDANT

KIWIPAY KENYA LIMITED 2ND DEFENDANT

AND

CENTRAL BANK OF KENYA INTERESTED PARTY

JUDGMENT

1. By a plaint dated 25th August 2022 and subsequently amended on 4th November 2022, the Plaintiff instituted this suit against the Defendants seeking various reliefs, both declaratory and pecuniary. The Plaintiff alleges grave violations of his constitutional and statutory rights, culminating in reputational damage, emotional distress, and financial loss.
2. In the amended plaint, the Plaintiff prays for judgment to be entered jointly and severally against the Defendants for:
 - i. A declaration that the 1st Defendant was not entitled to the documents allegedly used to open Kiwipay accounts and that such actions, including the denial of access to the said documents, violated the Plaintiff's rights under Article 31 of *the Constitution*.
 - ii. Damages for reputational injury.
 - iii. General and exemplary damages for dereliction of statutory duty.



- iv. Costs of the suit on a full indemnity basis.
 - v. Interest on all the above at court rates until payment in full.
3. The Plaintiff describes himself as a prominent public figure with a distinguished background in civil service, politics, and business, and avers that he was a majority shareholder and director of Kiwipay Kenya Limited until his resignation on 8th June 2022. His claim centers on the alleged unauthorized opening of three bank accounts in the name of Kiwipay Kenya Limited at the 1st Defendant's institution, which he discovered in March 2022. Despite issuing a demand letter dated 28th March 2022 seeking account opening documentation and related information, he alleges that the 1st Defendant did not respond.
 4. The Plaintiff contends that the accounts became the subject of investigations by the Assets Recovery Agency involving alleged suspicious transactions amounting to Kshs. 2.2 billion, resulting in negative media publicity that portrayed him as a money launderer and criminal. He asserts that the fallout severely damaged his reputation, exposed him to threats, and caused emotional and financial distress. He further claims that these developments adversely affected his 2022 parliamentary campaign and led to the withdrawal of investors from community development projects in Samburu.
 5. In response, the 1st Defendant, through its Statement of Defence dated 22nd June 2023, denied the Plaintiff's allegations. It asserted that the accounts were opened following a formal application by the 2nd Defendant, accompanied by requisite documentation, including board resolutions and director identification documents. The bank maintains that it conducted due diligence, confirmed the authenticity of the documents provided, and acted within the legal and regulatory framework. It denies any negligence or misconduct in the account opening process and disclaims any involvement in the dissemination of adverse media reports about the Plaintiff.
 6. An interlocutory judgment was entered against the 2nd Defendant on 24th October 2023, for failure to enter an appearance or file a defence. The present determination therefore proceeds against the 1st Defendant only.
 7. At the hearing, the Plaintiff, Mr. Robert Lemer keto, testified as Pw1. He adopted his witness statement and list of documents, both dated 25th August 2022, as his evidence-in-chief. His oral testimony reiterated the allegations set out in the plaint. He maintained that he had no knowledge of the three bank accounts opened with the 1st Defendant, Ecobank Kenya Limited, in the name of Kiwipay Kenya Limited. He asserted that he did not participate in the account opening process, nor was he consulted or informed of the same at any material time.
 8. Mr. Lemer keto further testified that upon his resignation as a director of Kiwipay Kenya Limited, he transferred his 58% shareholding to the company and was duly paid a consideration for the transfer. He emphasized that his involvement with the company had ceased as of 8th June 2022 and any actions taken thereafter, including dealings with the 1st Defendant, were without his knowledge or authority.
 9. Joyce Meeme, the Operations Manager of the 1st Defendant, testified as Dw1 and adopted her witness statement and supporting documents. She confirmed that the three accounts were opened at the Fortis Branch and that the forms bore the signature of Charles Mwangi, a former employee. While asserting that due diligence was conducted, she admitted that no official company search was produced. She confirmed the forms were signed by two directors and acknowledged that the accounts were later frozen by the Asset Recovery Agency on suspicion of money laundering and terrorism-related activities. She testified that one of the directors, Monthida Reshi, produced a work permit, though it



was not mandatory. Regarding the Plaintiff's demand letter of 28th March 2022, she claimed the bank responded but could not produce the response in her filed documents.

10. At the close of the trial, the parties filed written submissions. Having considered the pleadings, evidence, and submissions of counsel, the following issues emerge for determination:
 - i. Whether the 1st Defendant was negligent or in breach of statutory duty in opening the bank accounts;
 - ii. Whether the Plaintiff's rights under Article 31 of *the Constitution* were violated;
 - iii. Whether the 1st Defendant is liable for reputational harm and financial loss;
 - iv. Whether the Plaintiff is entitled to the reliefs sought.

Negligence or breach of statutory duty

11. Breach of statutory duty can form a basis for a claim in negligence. This was the holding of the Supreme Court in Kenya Wildlife Service v Rift Valley Agricultural Contractors Ltd, [2018] eKLR. In that case, the Supreme Court highlighted the key elements that must be proved in an action for negligence which are: a duty of care, breach of that duty, causation and damage. The court stated that:

“A defendant must owe a duty of care to the person bringing the claim, in the sense that they fall within a class of interests which the law considers should be protected... There is breach of that duty involving a failure to take reasonable care. Causation must be proved, and the type of damage alleged must be protected by the law.”

12. In Co-operative Bank of Kenya v Biwott (Civil Appeal 18 of 2019) [2022] KEHC 9946 (eKLR), the Court found 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.”

13. The Plaintiff's central claim is that three bank accounts were opened in the name of Kiwipay Kenya Limited without his knowledge, consent, or participation during a period when he was a majority shareholder and director. The 1st Defendant maintains that it relied on documentation submitted by the 2nd Defendant, including board resolutions and director identification documents.
14. However, the testimony of Dw1, Ms. Joyce Meeme, confirmed that the 1st Defendant did not conduct a company search at the Companies Registry to ascertain the directorship and shareholding of Kiwipay Kenya Limited at the material time. This omission fatally undermines the 1st Defendant's assertion of having conducted adequate due diligence.
15. Pursuant to the Central Bank of Kenya Prudential Guidelines on Know Your Customer (CBK/PG/06), banks are under a positive obligation to verify the identity and authority of persons acting on behalf of corporate entities. Guideline 3.2.1 specifically mandates institutions to confirm that the person purporting to act on behalf of a corporate customer is duly authorized and that accompanying documentation, such as board resolutions are availed.



16. I have examined the board resolution dated 19th March 2021, which was submitted to the 1st Defendant at the time of account opening. It is evident that the Plaintiff was neither present during the meeting at which the resolutions were passed nor appointed as a signatory to the subject accounts. The individuals present were identified as Maina Stephen Njenga and Monthida Rashi, and it was resolved that either of them could operate the account singly. Notably, the resolution is defective in that it fails to specify the name of the company to which it purports to relate.
17. Further, an analysis of the account opening documentation reveals that the Plaintiff did not append his signature to any of the documents relied upon by the 1st Defendant. The Defendant's assertion that it followed internal procedures is significantly weakened by its inability to produce a certified company search or any documentation acknowledging the Plaintiff's majority shareholding in the company at the material time. Moreover, the 1st Defendant did not call Charles Mwangi, the officer said to have processed or signed the account opening forms, to testify. Under cross-examination, Dw1 admitted that she neither personally handled the account opening nor possessed first-hand knowledge of the process. Her evidence was therefore hearsay in nature and lacked probative value.
18. It is a well-established principle that a party must call the maker of a document or a person with direct knowledge of the facts in issue. Failure to do so justifies an adverse inference. The Court in *Nkuene Dairy Farmers Co-op Society Ltd & Another v Ngacha Ndeiya* [2010] eKLR held that when a party fails to call crucial witnesses without explanation, the court may infer that their evidence would have been adverse to that party.
19. While banks retain discretion to rely on documentation provided by corporate applicants, this discretion is not unfettered. A financial institution owes a duty of care to verify that persons purporting to act on behalf of corporate clients are duly authorized. In the absence of credible evidence to demonstrate that the account was opened with proper authorization and with due regard to the company's ownership structure, I find that the 1st Defendant acted negligently in opening and permitting the operation of the said account without due verification.
20. The Plaintiff's uncontroverted evidence, including company records, indicates that he held a majority stake in the company at the material time. As such, his exclusion from the process and the omission of his consent raise serious concerns about the validity of the account and the propriety of the bank's conduct.
21. In *Standard Chartered Bank Kenya Ltd v Intercom Services Ltd & 4 Others* [2004] eKLR, the court underscored the duty of banks to verify the legitimacy of corporate mandates, especially in the face of potential internal fraud.
22. In light of the foregoing, I find and hold that the 1st Defendant failed in its duty of care to the Plaintiff by opening and operating the subject bank account without proper authorization and due diligence.

Violation of constitutional rights

23. The Plaintiff invoked Article 31 of *the Constitution* which protects the right to privacy, including information relating to family or private affairs. The Plaintiff alleges that by opening accounts using his personal information without consent, and by denying him access to account documentation, his right to privacy was violated. The evidence suggests that the Plaintiff had ceased to be a director as of 8th June 2022, though the account opening predated this. However, there is no evidence that the 1st Defendant used the Plaintiff's personal information after his resignation or disclosed it improperly. There is also no direct link provided between the bank and the media reports that contributed to reputational damage.



24. In the absence of evidence proving that the bank disclosed the Plaintiff's private data. I am not persuaded that that a violation of Article 31 has been established. The appropriate remedy in the circumstances lies in tortious liability for negligence rather than constitutional redress. I therefore find that the threshold for a constitutional violation under Article 31 has not been met.

Damages

25. The right to reputation is an established head of claim in tort. In *John v MGN Ltd* [1997] QB 586, the English Court held that general damages for defamation or reputational harm ought to compensate for injury to reputation, emotional distress, and diminished social standing.

26. I have cited with approval Halsbury's Laws of England 3rd Edition paragraph 689 where proof of the essentials of a cause of action for breach of statutory duty were laid down thus:

“In order to succeed in an action for damages for breach of statutory duty the plaintiff must establish a breach of a statutory obligation, which on the proper construction of the statute was intended to be a ground of civil liability to a class of person of whom he is one; he must establish an injury or damage of a kind against which the statute was designed to give protection and must establish that the breach of statutory obligation caused, or materially contributed to, his injury or damage.”

27. In *Dharamshi v Karsan* [1974] EA 41, the Court of Appeal for East Africa held that general damages for breach of contract are not allowed in addition to quantified or special damages. It stated:

“As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred.”

28. Applying these principles to the facts before me, I am satisfied that the Plaintiff, an individual of notable public service background and a 2022 parliamentary candidate, suffered significant reputational and political injury. The Plaintiff has established that the opening of unauthorized accounts triggered a criminal investigation, which attracted adverse media publicity. Although the bank denied any connection with media dissemination, the negligent handling of account opening documentation materially contributed to the situation that exposed the Plaintiff to reputational injury.

29. While the Plaintiff has not proved specific pecuniary loss or tendered expert evidence of emotional injury, his political aspirations and public goodwill were demonstrably impacted. As such, general damages are warranted to vindicate his reputation. However, in the absence of aggravating factors or evidence of malice, this Court is not inclined to award exemplary damages.

30. Consequently, I find that the 1st Defendant is liable in negligence and for breach of statutory duty under the Central Bank of Kenya Prudential Guidelines for failing to conduct adequate due diligence in opening accounts in the name of Kiwipay Kenya Limited.

31. For the reasons aforesaid, judgment is hereby entered in favour of the Plaintiff against the 1st and 2nd Defendants, jointly and severally, as follows:

- i. A declaration that the 1st Defendant acted in breach of its statutory duty under the CBK Prudential Guidelines.
- ii. General damages and consequential losses totaling Kshs. 20,000,000.00
- iii. Costs of the suit.



iv. Interest on items (ii) at court rates from the date of judgment until payment in full.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Ndegwa for Plaintiff

Mr. Mwangi h/b for Mr. Rimuhi for 1st Defendant

Court Assistant: Carlos

