



**Njoroge v Family Bank Kenya Limited (Civil Case 88 of 2012)
[2024] KEHC 17000 (KLR) (Civ) (27 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 17000 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 88 OF 2012

TW CHERERE, J

MARCH 27, 2024

BETWEEN

WILSON NJOROGE PLAINTIFF

AND

FAMILY BANK KENYA LIMITED DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff was, at all material times, a customer of the Defendant Bank, operating Account No. 08118072621108229 at the Defendant's Nakuru branch since 2007.
2. Over the course of their longstanding bank-customer relationship, the Defendant extended loan and overdraft facilities to the Plaintiff, a fact admitted by both parties.
3. On 22nd December 2010, the Defendant caused the Credit Reference Bureau Africa Ltd (CRB) to list the Plaintiff negatively in relation to an alleged unpaid loan facility. The listing remained in force until 29th July 2011, when the Defendant amended the credit report.
4. The Plaintiff subsequently instituted these proceedings by a Plaint dated 17th February 2012 seeking a permanent injunction, general and punitive damages for libel, damages for breach of confidentiality, interest, and costs of the suit.
5. On 24th January 2017, the 2nd Defendant (CRB) raised a Preliminary Objection that the defamation claim was time-barred under Section 4(2) of the *Limitation of Actions Act* and Section 20 of the *Defamation Act*. The court upheld this objection, and the suit against the CRB was struck out.



6. The matter thus proceeded solely against the Defendant Bank. The Plaintiff's claim is based on alleged negligence and breach of confidentiality concerning the erroneous CRB listing.
7. From the evidence on record, I have identified the issues for determination as follows:
 1. Whether the Defendant breached its contractual duty of confidentiality
 2. Whether disclosure of Plaintiff's information to CRB was permissible under law or within the contract
 3. Whether the Plaintiff suffered loss or damage as a result of the Defendant's actions
 4. Whether the Plaintiff is entitled to injunctive relief
 5. Who bears the costs of the suit

Breach of Confidentiality

8. The main issue under this heading is whether the Defendant unlawfully disclose the Plaintiff's credit information to the CRB.
9. Contrary to the Defendant's submissions, the Plaintiff clearly pleaded at paragraph 6 of the Plaint that the Defendant had recklessly and negligently caused the publication of the negative credit listing. It is a settled principle of law that parties are bound by their pleadings, and a court can only adjudicate issues that have been raised therein. In *Galaxy Paints Company Ltd v Falcon Guards Ltd* [2000] eKLR, the Court of Appeal affirmed that:

“Issues for determination in a suit generally flow from the pleadings, and unless pleadings are amended, the trial court may only pronounce judgment on the issues arising from the pleadings or as framed by the parties.”
10. This position was reinforced in *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR, where the Court of Appeal held that:

“It is now a well-established principle that parties are bound by their pleadings, and any evidence or submissions that deviate from those pleadings must be disregarded.”
11. Accordingly, having expressly pleaded the alleged recklessness and negligence by the Defendant, the Plaintiff laid a proper legal foundation for the court to consider liability. The Defendant's argument that no such claim was pleaded is therefore unsubstantiated and contrary to established jurisprudence.
12. The Defendant admitted to submitting the Plaintiff's name to the Credit Reference Bureau (CRB) and further acknowledged through correspondence dated 29th July 2011 that the listing was erroneous. The Plaintiff contended that this negative listing was effected without the mandatory statutory notice required under Regulation 25(1) of the Credit Reference Bureau Regulations, 2013, which obligates a financial institution to give at least thirty (30) days' notice to a customer before submitting adverse credit information. The Defendant did not produce any evidence to demonstrate compliance with this requirement. The omission to issue such notice renders the listing procedurally unlawful and constitutes a breach of the duty of care that a bank owes to its customer. Such a breach is actionable in law, even where the listing is subsequently corrected.
13. The relationship between a bank and its customer imposes an implied duty of confidentiality. In *Selangor United Rubber Estates Ltd v Cradock (No. 3)* [1968] 1 WLR 1555, it was held that a



bank owes a contractual duty to exercise reasonable care and skill, including in handling customer information.

14. The Defendant failed to show that a 30-day notice was served before the listing, in violation of the mandatory requirement under Regulation 25(1).
15. Consequently, even though the listing itself was authorized by Section 31(1)(c) of the *Banking Act*, the lack of procedural compliance renders the disclosure wrongful.

2. Whether the disclosure was permissible under law or within the contract

16. The Defendant relied on Regulation 20 of the Credit Reference Bureau Regulations, which provides a legal shield for institutions that act in good faith when submitting credit information. However, this protection is not absolute. While the Defendant was entitled to report credit information to the Credit Reference Bureau under Section 31 of the *Banking Act*, it was equally bound to comply with the procedural safeguards under Regulation 25(1), including the issuance of a 30-day notice before listing.
17. The Defendant admitted that the listing was erroneous and did not demonstrate compliance with this requirement. Consequently, the Defendant cannot invoke good faith to escape liability.
18. This position finds support in *Andrew Kiriti Gathii v Equity Bank Limited* [2017] eKLR, where the court held that the failure by a bank to issue the mandatory 30-day notice prior to a negative listing with a credit reference bureau amounted to a breach of duty of care. The court emphasized that statutory authority does not excuse non-compliance with procedural safeguards.
19. Accordingly, I find that the Defendant's conduct in this case breached both statutory and contractual obligations and is therefore actionable.

3. Whether the Plaintiff suffered loss or damage as a result of the Defendant's actions

20. The Plaintiff testified that the negative listing led to reputational harm, exclusion from company directorship, and denial of credit to their company, ABC Super Feeds Ltd. However, under cross-examination, he admitted that he remained a director and that the company continued to operate and had not been denied credit.
21. From the foregoing, I find that the Plaintiff failed to produce documentary or corroborative evidence demonstrating quantifiable loss.
22. In *Anastassios Thomos v Occidental Insurance Company Ltd* [2017] KEHC 2442 (KLR), the court held that in negligence claims, the Plaintiff must prove that they suffered loss as a result of a breach.
23. Similarly, the principle in *Yunes Muniafu Mukolwe v Moses Makokha & 3 others* [2016] KEHC 6346 (KLR) and Sections 107–109 of the *Evidence Act* reiterate that he who alleges must prove.
24. It therefore follows that whereas the erroneous listing may have been distressing, no actual damages have been proven.
25. Notwithstanding the absence of demonstrable or quantifiable loss, courts have recognized that damages may nonetheless be awarded for breach of confidentiality or wrongful credit listing, given the inherent inconvenience, anxiety, and reputational risk such actions may cause. In *Andrew Kiriti Gathii v Equity Bank Ltd* (supra), the court held that a bank's failure to exercise due diligence in submitting adverse information to a Credit Reference Bureau justified an award of damages, even in the absence of proven financial loss. The court emphasized that such conduct undermines the trust and confidence inherent in the bank-customer relationship and warrants compensatory redress.



26. Likewise, in *Eric Omuodo Ounga v Kenya Commercial Bank Ltd* [2017] KEHC 2842 (KLR), the court reiterated that banks owe a duty of care in both contract and tort, and breach of that duty can justify compensation.
27. In *Namalwa Christine Masinde v National Bank of Kenya Ltd* [2016] eKLR, the court awarded KES. 200,000 for distress caused by the wrongful listing. Given the foregoing authorities, I accordingly award the Plaintiff general damages in the sum of Kenya Shillings Five Hundred Thousand (KES 500,000) for breach of confidentiality and the procedural irregularities occasioned by the erroneous listing.
28. Punitive damages are awarded not to compensate a Plaintiff, but to punish a Defendant for oppressive, malicious, or high-handed misconduct. No such malice or egregious conduct has been demonstrated in this case. The Defendant's actions, while negligent and procedurally flawed, were not shown to be deliberately oppressive or vindictive. Accordingly, the prayer for punitive damages fails.

4. Whether the Plaintiff is entitled to injunctive relief

29. The listing was amended in July 2011, and there is no evidence of continued threat. As held in *Joseph Oduor Anode v Kenya Red Cross Society* [2012] KEHC 3607 (KLR), injunctive relief should not be granted for concluded actions. Thus, this relief is now moot and is declined.

5. Costs

30. The Plaintiff is entitled to costs as the successful party. As observed in *Joseph Oduor Anode and Judicial Hints on Civil Procedure* by Justice Kuloba (p.94), costs follow the event and are intended to compensate the successful litigant for expenses incurred.
31. Upon full consideration of the evidence, pleadings, and submissions, I make the following final orders:
 1. Judgment is entered for the Plaintiff against the Defendant for breach of confidentiality.
 2. The Defendant shall pay to the Plaintiff general damages of Kenya Shillings Five Hundred Thousand (KES. 500,000) for the said breach
 3. The claim for punitive damages is dismissed.
 4. There being no evidence of a continuing or threatened violation, the prayer for a permanent injunction is dismissed.
 5. The Plaintiff shall have the costs of the suit.
 6. Interest on the general damages shall accrue at court rates from the date of this judgment until payment in full.

DELIVERED AT NAIROBI THIS 27TH DAY OF MARCH 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Plaintiff - Mr. Maina for Willy Maina & Co. Advocates

For Defendant - Mr. Muriithi for Kimani & Muriithi Associates

