

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA COURT
AT MOMBASA
COMMERCIAL & ADMIRALTY DIVISION
COMMERCIAL CASE NO. E068 OF 2022

NEW MEGA AFRICA LIMITED.....PLAINTIFF

=VERSUS=

ABSA BANK KENYA PLC.....DEFENDANT

PLAINTIFF'S FURTHER WITNESS STATEMENT

My name is David Omusala Abai, I am the Director of the Plaintiff herein and wish to make this further statement.

1. That at the material time, I was a customer with the Defendant bank "The Bank herein". When I began banking with the Defendant Bank, my business was performing very well and all facilities with my existing banks were well serviced and my credit score with CRB was positive.
2. The bank through their staff promised me and the company, the Plaintiff herein, flexible and competitive support with an unsecured loan facility at the beginning since I had a good credit score from my previous facilities.
3. Immediately the relationship started, and the key contact people were Wycliffe Makori - Relationship Manager and Evans Murumba as the Head of Commercial, Coast Region. I did not know anyone else apart from the two bankers in addition to the staff who served me in the branches.
4. Later as the relationship with the Bank grew, I started noting a funny trend of behaviour from the two-bank staff aforementioned. This started when I got my invoice discounting facility, I would apply for the drawdown of the facility in the usual format indicated in the offer letter, but the bank staff would introduce excuses to delay the loan drawdown. The common excuses were that the approvers were away, the system was down, there was a long queue and therefore I had to wait.
5. This trend was against the agreed arrangement that all drawdown requests would be processed on the same day as long as the bank received it by 11AM. The situation got worse to the extent that the loan disbursement took close to a week.

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6. I sought for a meeting with My Relationship Manager and Regional Sector head to address the issue but nothing changed, with all these frustrations, I later requested to be explained what solutions would be done since my business was now getting impacted negatively.
7. The invoice discounting facility and the overdraft line disbursement was to be utilized towards financing fuel and other operating expenses for our smooth business operation. In case of any delays, the trucks would miss loading and thus the client amended the export documents since the customs entry have expiry periods and any expired document attracts penalties of up to 400USD.
8. The same would lead to missed schedules and consequently result into loss of business running into months.
9. Further, at the time I was joining the Bank, I was servicing FUJITA MITSUBISHI-Dongo Kundu, Tororo Cement, Mombasa Cement, Rai Cement and China City-Third Engineering.
10. Slowly owing to the Bank's delays and frustrations, I started getting cancellation of Job orders leading to termination of our contracts due to breach of delivery periods with our main clients and subsequently the 11 trucks that had been leased out to our company by MOMBASA CEMENT LTD were cancelled.
11. This led to the loss of our contract with Mombasa Cement and Tororo cement and that included loss of managing a fleet of over 40 trucks, and we were out of the business.
12. The Regional Manager and the Relationship manager -Wycliffe Makori indicated to me that if I wanted to experience good and fast service with the Bank, I had to grease the system. They started by demanding cash facilitations every time I made a loan drawdown request or received payment from the client.
13. As evidenced in the attached Mpesa statements and Bank transfers, a few days preceding or after a loan drawdown, I would always transfer money from my ABSA or NBK or STANBIC to my Safaricom Mpesa line and send the money to the two bank agents to facilitate processing of my loan disbursement.
14. Occasionally when I didn't have money in Mpesa, they would always ask for cash or when the amount demanded is more than the Mpesa limit they would always cash which is millions of shillings given to the bank representatives.

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15. Where I completely had no money, they would exceptionally process the payment but hold it after crediting my account until I paid them money. It is only after I paid the bank agents the money demanded that they would allow us to spend the proceeds of the loan disbursement. You will note that every time a loan was disbursed to my account or any of my customers paid through the Absa account, the first thing was always to pay the Absa staff.
16. The facilitation fees to the Absa Bank employees would range from as low as KES 2,000 to over Kes 500,000 in Mpesa, Bank Transfer or Cash.
17. There are instances where the bank employees have even demanded that I pay for insurances for a vehicle Jointly registered in the bank and employees name. Failure to which my loan drawdown request or request for temporary overdraft would not be processed and the blackmailing and coercion into paying for personal insurance continued every time.
18. There have been cases where the two-bank staff even demanded I send money to Makoris spouse Evelyn Essendi and Evans wife business registered as Nivanna Interiors. All this demands for cash were to facilitate processing of my loan requests.
19. In the midst of all this frustration and financial exploitation by the bank staff, I tried to seek audience with the Regional manager Doufold and Nkurmah Branch Manager offered no help.
20. I tried to get any other senior bank official from Absa to intervene and save my business from collapsing and the exploitation I went through. I sent an email to Elizabeth Wasuna Director Commercial concerning my frustrations on 30.11.2021 (Pg 284 and 337 vol 1) but there was no response.
21. The bank employees blocked me from accessing anyone else who could support me. I even asked the bank officials to let me seek a facility from another bank if they could not support me but considering that at the time the bank had completely lured me into this relationship by getting to provide an all-Assets debenture, Personal guarantee from director and Legal charge over the property. I was helpless and became a complete slave of the bank.
22. My many pleas to the bank staff through email, letters, calls, SMS, were only met by more demands for finances and frustrations.

10/11

23. Attached, is a table summary of the solicitation payment:

| NO. | NAME | AMOUNT Paid | Date | REQUEST TYPE | REQUEST DATE | AMOUNT DISB. | PAY TY |
|-----|------------------------------|-------------|------------|-------------------------|--------------|---------------|--------|
| 1 | Evelyne Essendi-Makori wife | 100,000.00 | 24.04.2020 | Temporal Od | 22.04.2020 | 3,000,000.00 | MPESA |
| 2 | Wycliffe Makori | 40,000.00 | 27.11.2020 | Tororo payment | 25.11.2020 | 5,550,555.00 | MPESA |
| 3 | Evansa Murumba | 100,000.00 | 13.11.2020 | OD LIMIT-TORORO PAYMENT | 11.11.2020 | 5,376,147.00 | MPESA |
| 4 | Nivana Interior-Evans spouse | 500,000.00 | 21.09.2020 | LOAN DISBURSMENT | 25.09.2020 | 36,000,000.00 | TT |
| 5 | Wycliffe Makori | 30,000.00 | 15.09.2020 | BUZZ AFRIQUE REFUND | 15.09.2020 | 820,000.00 | MPESA |
| 6 | Evans Murumba | 100,000.00 | 17.12.2020 | Tororo payment | 16.12.2020 | 5,216,282.00 | MPESA |
| 7 | Wycliffe Makori | 40,000.00 | 23.12.2020 | INVOICE DISCOUNTING | 21.12.2020 | 2,567,752.00 | MPESA |
| 8 | Wycliffe Makori | 27,000.00 | 08.04.2021 | EXCESS LIMIT | 06.04.2021 | 5,000,000.00 | MPESA |
| 9 | Evans Murumba | 7,000.00 | 08.04.2021 | EXCESS LIMIT | 06.04.2021 | 5,000,000.00 | MPESA |
| 10 | Evans Murumba | 100,000.00 | 24.12.2021 | RESTRUCTURE APPEAL | NBK | | MPESA |
| 11 | Evans Murumba | 30,000.00 | 14.12.2021 | RESTRUCTURE APPEAL | NBK | | MPESA |

24. At the point where my business was now getting grounded the bank officials even became more vicious in their act of blackmail and sabotaged my business by leaking my confidential company bank information about the company finances to my suppliers and customers.
25. Upon the leakage of the Plaintiff's financial information, one of my suppliers and client accosted me with an email print out of the bank correspondences with copies of Bank statement showing my overdrawn account, I lodged a complaint to the Regional Manager- Evans Murumba.
26. Mr Evans Murumba and Mrs Sophie Omondi -Relationship manager promised to get to the root of the information leakage and get back to me. The Regional Manager even tricked me into handing over the full set of the physical evidence to help their investigation.
27. Upon much follow up and demand for response, Mrs Sophie Omondi finally sent a letter apologising and confirming appropriate action had been taken on the staff and assuring us that all the staff who were managing my account had been asked to attest that they will not leak my information again (pg. 312 vol 1)
28. While Sophie never denied that the bank had allowed its employees to leak my information, they Never stated the exact action that had been taken.
29. To my surprise, I later learnt the said employee who was leaking my information and frustrating our business was rewarded with a promotion and a hefty pay increase.

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30. To scuttle my effort to seek resolution to my grievances with the bank, Mrs Sophie later informed me that my account relationship was being handed over to someone else who to date has never made any effort to visit me or reach out to solve the issues.
31. The bank employee, Wycliffe Makori- Relationship manager, even coerced my company to lend KES 820,000 to BUZZ Afrique an Absa client to clear some arrears. This time the staff was earning a commission from such transaction.
32. This sabotage greatly affected our business to the point that our client itself, Tororo Cement tried to find for us a solution to the problem by writing to Premium energy to help us fuel our trucks through their letter dated 11.06.2022 and another letter of comfort to Endeavour credit on 1.03.2022 to assist the company to come back to its normal operation. This was because of our good name and the goodwill.
33. In light of the bank's failure to take action on the alleged staff members who frustrated and extorted money from New mega Africa, even after I had brought all these issues to their attention, therefore I believe the conduct and behaviour of the bank staff is representative of the bank and only points to the fact that they were sanctioned by the bank.
34. The arrogance and disregard with which the bank has handled my issues and grievances leaves me wondering whether the bank operates in a regulated environment like its peers who are so responsive to customers issue and relationships.

That is all I wish to state.

Dated at Mombasa this 28th Day of July, 2023



ABAI OMUSALA DAVID

