

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL CASE NO. E026 OF 2024**  
**FORMERLY ELC CASE NO 457 OF 2017**

**MICHAEL WAMBUA MATHEKA T/A  
ZACH ELECTRONICS PLUS MOTORS LIMITED.....  
PLAINTIFF**

***VERSUS***

**FAULU MICROFINANCE BANK LIMITED.....  
DEFENDANT**

**RULING**

1. Before this court is a Notice of Motion application dated 29<sup>th</sup> April, 2024 seeking an order to compel the Respondent to produce and deliver/or avail copies of statements of accounts held in the Plaintiff's name.
2. The Application is supported by the affidavit of Michael Wambua Matheka who deposes that his Advocate wrote to the Respondent's Advocate more than once seeking for compliance of the orders issued herein on 5<sup>th</sup> March 2018 to the effect that the Defendant was to avail the Plaintiff's statements of Account. It is contented that the Respondent sought to set aside the order but the same was dismissed. After a lengthy period of time, the Respondent furnished the Plaintiff's Advocate with some of the statements of account

to the exclusion of some crucial statements which are essential for the discharge of the mandate of the Interest Rate Advisory Centre (IRAC) officers whom he has retained to assist him in the scrutiny of the interest rates charged by the respondent and the same could not be conclusively done without the said statements of account. It was deposed that despite writing letters to the Respondent indicating what was needed, the same was not responded to.

3. In response to the Application, the Defendant/ Respondent filed a Replying Affidavit in which the Legal Officer, Fredrick Nyabuti deposed that their advocates have on numerous occasions supplied the plaintiff's advocates with the statements. That the defendant took steps towards ensuring compliance with the court orders as it is aware that court orders are not issued in vain and that this application is an abuse of the court process and should be dismissed.
4. The Plaintiff/Applicant filed a supplementary affidavit dated 22<sup>nd</sup> July 2024 and contended that he has made several requests to the Defendant/Respondent that have not been responded to; that he has physically visited the branch as advised on multiple occasions but the Respondent has adamantly refused to comply with the aforementioned court orders whilst insisting that they can only deal with my Advocates on record and indicated that the Respondent had only partially complied with the order.

5.The application was canvassed by way of written submissions. The Plaintiff/ Applicant relied on the cases of ***Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, David Bundi v Timothy Mwenda Muthee [2022] eKLR, Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review application no 6 of 2014*** and asked the court to grant the order sought.

6.The Defendant filed submissions dated 19<sup>th</sup> June 2025 and submitted that the present application should be struck out as it seeks similar orders to the orders issued by Honourable O. Angote on 26<sup>th</sup> February, 2018 and there is no reason for this court to interfere especially since the defendant has proved compliance with the order. Further, that the defendant is not in default as the plaintiff has acknowledged receipt of the account statements. Reliance was placed on the cases of ***Gachoni Enterprises Limited V D.N. Nyaga T/A Njeru, Nyaga & Co. Advocates & Another [2012] eKLR, Alken Connections Limited v Safaricom Limited & 2 others [2013] eKLR, Katsuri Limited v Kapurchand Depar Shah [2016] eKLR.***

### **Analysis and determination**

7. I have considered the Application, the affidavits, annexures thereto and submissions of the parties and the question.

8. On 26<sup>th</sup> February 2018 Angote J, issued orders allowing prayers 2, 4 and 5 of the Plaintiff's Notice of Motion dated 20<sup>th</sup> November 2017. The relevant prayer which was No. 4 in the Notice of Motion sought an order that the Honourable court be and is hereby pleased to order for accounts to be taken and the plaintiff to be supplied with all statements of accounts.

9. The Defendant/Respondent subsequently filed an application dated 30<sup>th</sup> January 2019 seeking to set aside that order but the same was dismissed vide a ruling dated 31<sup>st</sup> January, 2020.

10. From the arguments of the parties, it appears that some documents were delivered but some were not. Compliance with an order is not a favour to the court or to the other party. It must be complied with as it is. This was reiterated by the Court of Appeal in the case of **Republic V Governor, Central Bank Of Kenya & 2 Others, Ex-Parte Ratilal Automobiles Ltd & 3 Others [2006] KEHC 437 (KLR)** which held that;

***“It is however important to note that after its finding in Gordon V. Gordon, the court then proceeded to hear the appeal, but it is clear that this is not the appellate stage, and it is my***

***humble opinion, that a party cannot just choose to ignore an order on the basis of the fact that he believes that it is 'illegal' or that the court acted in excess of it's powers when granting the order, without preferring an appeal, or if he has indeed preferred one, without obtaining an order of stay of proceedings from the Appellate Court. Orders of the court must be adhered to until they are set aside."***

11. The Defendant/Respondent has indicated that it has complied and in its letter dated 4/09/2023 that the statements of accounts had been attached. It appears that there are other documents that the Appellant needs in addition to the statements of accounts and he has listed them. It is very unfortunate that a bank that has a Legal Advisor would fail to comply with orders of the court for so long, despite being aware of the same. The Plaintiff/Applicant has indicated that he is being frustrated over documents that are in the custody of the Defendant/Applicant and the non-compliance has occasioned a lot of delay in this case. I therefore direct that the Defendant/ Respondent produce and deliver/or avail copies of ALL statements of accounts under the plaintiff's names including all the documents sought by the Plaintiff within 30 days of this ruling.

Orders accordingly.

**Ruling signed, dated and delivered virtually this 27<sup>th</sup> day of November, 2025.**

**E. N. MAINA  
JUDGE**

**In the presence of:**

Ms Swaka for Defendant

Ms Kavita for Applicant

C/A: Geoffrey

ORIGINAL