Bank Defence Relying on a Contractor Injunction Against Calling a Bond

Educational sample 197 | Nairobi

Educational reconstruction from a reported Kenyan judgment. This is newly drafted text, not an original court filing and not a matter handled by our team. Identifying details are replaced with bracketed fields. Verify the facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI COMMERCIAL AND TAX DIVISION

CAUSE CIVIL SUIT OR APPLICATION NO [correct reference]

[CLAIMANT PLAINTIFF OR APPELLANT] v [RESPONDENT OR DEFENDANT]

STATEMENT OF DEFENCE

1. The Defendant responds to the plaint’s paragraphs [references] and identifies the actual guarantees, sums and demand terms. Any admission of issuance or receipt is stated clearly. Denial of a document whose terms are produced requires an evidential basis.

2. The historical defence relied on an injunction in the contractor’s suit. The operative order, parties restrained, date, service and later extension are [copies and pages]. A prohibition on calling a bond is not automatically an order restraining the bank from paying a demand already made.

3. Any allegation that the demand was fraudulent must identify particulars under Order 2 rule 10 and supporting facts. The fact of an underlying contractor dispute does not by itself establish fraud in a complying demand.

4. The bank’s arrangement to debit an agent’s account is disclosed accurately where relevant. Insufficient funds in that internal arrangement do not automatically alter the guarantee’s independent payment obligation. The bank must address the contractual undertaking itself.

5. The historical debt defence was rejected, while several additional damages claims later failed. A new defence must identify any payment, operative order or valid demand defect on the actual facts. It must not treat the mirror’s generic Dismissed label as dismissal of every claim.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Answer each plaint allegation with precise admissions, denials and the actual defence. Check summons, appearance, defence deadlines, witnesses and documents, and any court directions. Plead exclusions, fraud and other material matters with the required particulars. Disputed facts are not a pure preliminary objection. Do not claim missing records exist or treat an unsuccessful historical position as settled law.

Supporting material schedule: [document date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach only genuine available records and mark missing records accurately.

Source and procedural limits

A project company held two bank-issued on-demand performance bonds of KSh 62,263,936 and USD 474,634, valid until May 2022. Demands dated 6 October 2021 were delivered on 7 October. The bank did not pay. The contractor obtained a later order restraining calling up the bonds, extended only for a limited period. A 2023 partial ruling dealt with the bond debt; payment followed on 20 April 2023. The remaining trial concerned fraud and additional damages, with evidence about shared demand letters and the bank's internal funding arrangements.

The final 2026 judgment found collusion and awarded KSh 1.5 million exemplary damages for fraud, plus costs and interest of the suit. It refused separate general damages for fraud, contract, trust or fiduciary breach and disgorgement. The bond principal had already been paid after the earlier partial decision, so the final exemplary award is not a new second principal award. The mirror labels the outcome Dismissed, but the judicial final order expressly awards the exemplary damages and says the other claims fail.

On-demand bond liability follows the wording of the independent guarantee and a complying demand; internal arrangements do not automatically excuse the bank. Fraud requires particular pleading under Order 2 rule 10 and strict proof above ordinary probability but below criminal proof. A later order must be read for its precise scope, parties and duration. Do not assume a beneficiary who is not a bank customer has a fiduciary relationship or equate every delay with fraud. General damages and disgorgement are not automatic additions to paid principal and interest.

[2026] KEHC 7143 (KLR) — 16 April 2026. Original judgment: https://sheriahub.com/cases/ke/caselaw/magnate-ventures-limited-v-credit-bank-plc-2026-kehc-7143-klr

The original decision may identify participants. The specimen replaces their identifying details. A source decision is not proof that a draft was filed, that an allegation succeeded, or that the same result will follow in another case.