REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI LAW COURTS
CIVIL SUIT NO. OF 2021

PETER NDEGWA GATHAIYA.....PLAINTIFF

-VERSUS-

ECOBANK KENYA LIMITED.....1ST DEFENDANT
DIRECTOR OF PUBLIC PROSECUTION.....2nd DEFENDANT
INSPECTOR GENERAL OF POLICE.....3rd DEFENDANT
THE HON ATTORNEY GENERAL.....4th DEFENDANT

PLAINT
(Fast-Track)

1. The Plaintiff is a male adult of sound mind , residing in Nairobi within the Republic of Kenya; and whose address for purposes of this suit shall be care of **Ahmednasir, Abdikadir& Company Advocates, FCB Mihrab, 12th Floor, Lenana Road, P. O Box 57731-00200 Nairobi, email: ahmedabdi@ahmedabdi.com;**

2. The 1st Defendant is a limited liability company incorporated under the provisions of the Companies Act, CAP 486 of the Laws of Kenya and is a company within the meaning of the Companies Act, 2015. The 1st Defendant is in the Banking business and related services. **Service of summons upon the Defendant shall be effected through the Plaintiffs' Advocates office.**

3. The 2nd Defendant is the Director of Public Prosecutions of the Republic of Kenya and is sued in for and on behalf of the Government of Kenya. **Service of summons upon the 2nd Defendant shall be effected through the Plaintiffs' Advocates office.**

4. The 3rd Defendant is the Inspector General of Police of the Republic of Kenya and is sued in for and on behalf of the Government of Kenya. **Service of summons upon the Defendant shall be effected through the Plaintiffs' Advocates office.**

5. The 4th Defendant is the Attorney General of the Republic of Kenya and is sued in accordance with the provisions of the Government Proceedings Act (CAP 40) for and on behalf of the Government of Kenya. **The Service of summons upon the Defendant shall be effected through the Plaintiffs' Advocates office.**

6. On or about the 20th January 2017 the police from the Banking Fraud Investigation Unit of the Directorate of Criminal Investigation, being agents or servants of the Inspector General of Police; the 2nd Defendant herein, jointly and severally with the Director of Public Prosecution, the 3rd Defendant herein, on behalf of the Government of Kenya, and acting on information provided by the 1st defendant's agent Mr. Simon Karuki, maliciously, and without reasonable cause preferred before the Magistrate's Court at Nairobi charges against the plaintiff accusing him of Conspiracy to commit a felony Contrary to Section 393 of the Penal Code, CAP 63, Laws of Kenya.

7. The aforementioned allegations were to the effect that on the dates between 26th day of March 2015, and 18th September 2015 at Ecobank Limited head office in Nairobi within

Nairobi County, jointly with others conspired to steal Kshs. 163,028,622.97 (One Hundred Sixty Three Million Twenty Eight Thousand Six Hundred and Twenty Two Shillings and Ninety Seven Cents) the property of Ecobank Limited. Acting on the said wrongful and malicious complaint, the Plaintiff was arrested on 19th June 2017 and placed under custody until 20th June 2017 when he was arraigned before the Magistrate's court in Nairobi, on the charge of Conspiracy to commit a felony Contrary to Section 393 of the Penal Code.

Particulars of Malice

a. The 1st and 2nd Defendants unjustifiably and falsely prosecuted the plaintiff.

b. That the 1st Defendant knew that it had no valid claims against the plaintiff to justify a criminal complaint.

c. The 1st Defendant was motivated by the need to make an insurance claim as one of the reasons for the malicious charges.

d. the 1st defendant's agents recorded statements with the police implicating the plaintiff of the charges and provided witnesses to give evidence against the plaintiff during the trial and that it is as a result of the complaints made by the 1st defendant that the plaintiff was charged and prosecuted by the 2nd Defendant's agents/servants.

e. The 2nd Defendant instituted a criminal charge against the Plaintiff without conducting any or any proper and prudent investigation to verify the truth of the pertinent facts.

f. That during the process of the purported investigations and arrest, the 2nd Defendant's agents harassed and humiliated the plaintiff.

g. It was further alleged that the 2nd Defendant maliciously and without reasonable and probable cause continued to prosecute the charges against the plaintiff before the Chief Magistrate's Court and caused the said court to commit the plaintiff for trial at the Magistrate's Court for a period of almost four years.

h. 1st defendant acted unreasonably and was actively and maliciously involved and instrumental in investigating as well as supporting the prosecution against the plaintiff.

i. The defendants acting jointly and severally fabricated the criminal charges against the plaintiff and proceeded to prosecute him without any reasonable basis and that on 16th December 2020 the plaintiff was acquitted of the said charges.

8. From the foregoing the Plaintiff avers that his prosecution was characterized by malice and bad faith by the Defendants, and was equally marred with misrepresentations. Furthermore, as a result of the aforementioned prosecution, the Respondent trampled on the Plaintiff's constitutional rights and fundamental freedoms under Article 27, 28, 47, 48 and 49 of the Constitution of Kenya, 2010.

9. The Plaintiff further avers that the reasons advanced by the Defendants as the basis for the aforementioned prosecution were totally unfounded without any legal basis and were a fabrication merely intended to cover up for the 1st Defendant's illegal action; fabrication of charges, and the decision to prosecute the Plaintiff.

10. After the said arraignment and trial, the information, charge and prosecution was found to be without substance and consequently the Plaintiff was acquitted under Section 210 of the Criminal Procedure code, CAP 75, Laws of Kenya.

11. By reasons of the aforesaid the Plaintiff's reputation has been harmed and he has suffered loss, stress and mental anguish. He was prevented from attending work adequately or at all. The 1st and 2nd Defendants actions were high handed, discriminatory, malicious and oppressive, and the plaintiff claims special damages.

12. The Plaintiff avers that he was serving in a unique employment serving a specialized industry and may not be able to get new employment elsewhere and his prospects for future income are reduced to nothing. The nature of his employment is predicated on his social standing and integrity which as of now has been completely and permanently rubbished due to the malicious charges.

Particulars of Special Damages

i) Loss of income or earnings of a sum of Kshs. 162,500,000/-; being a total of the Kshs. 630,000/- per month plus Kshs. 2,000,000/- per annum for a total of 17 years, as per the contract of employment; and

ii) Legal fees for representation Criminal Case No. 1104 of 2017; Republic vs Peter Ndegwa and Roy Gatobu, to be adduced at the Hearing.

13. That Despite demand being made and intention to sue being issued, the Defendants have failed and or refused to meet the Plaintiff's rightful demands thus necessitating the instant claim.

14. There is no other suit pending and there have been no previous proceedings in any court between the Plaintiff, and the Defendants over the subject matter.

15. The Cause of Action arose in Nairobi within the jurisdiction of this Honourable Court.

REASONS WHEREFORE the Plaintiff prays for:

a) Special damages to the tune of Kshs. 162,500,000/-; being a total of the Kshs. 630,000/- per month plus Kshs. 2,000,000/- per annum for a total of 17 years, as per the contract of employment, plus the egal fees to be adduced at the hearing.

b) General and exemplary damages.

c) Compensation of Kshs. 50,000,000/- for the suffered loss, stress and mental anguish, character assassination, wrongful arrest, and **malicious prosecution**.

d) Liability be apportioned in the ratio of 70:30, 70% against the 1st Defendants and 30% against the 2nd, 3rd, and 4th Defendants jointly.

e) Costs

f) Interest on (a), (b), (c), and (e) above, at court rates

DATED AT NAIROBI THIS ....9th.... **DAY OF** ....March.... **2021**

AHMEDNASIR, ABDIKADIR & COMPANY

ADVOCATES FOR THE PLAINTIFF

Drawn & filed by:
Ahmednasir, Abdikadir & Company
Advocates
FCB Mihrab, 12th Floor
Lenana Road
P.O. Box 57731-00200
NAIROBI.

To be served upon:
ECOBANK KENYA LIMITED
Ecobank Towers, 15th Floor
Muindi Mbingu Street
P.O Box 49584-00100
Nairobi.

The Director of Public Prosecution
NSSF Building
Block 'A', 19th Floor
P.O Box 30701-00100
Nairobi.

Inspector General of Police
Kenya Police Headquarters
Vigilance House
Harambee Avenue
P.O Box 30083
Nairobi.

The Attorney General
Office of the Attorney General
And Department Of Justice
Sheria House
Harambee Avenue
P.O. Box 40112-00100
Nairobi.
Email: legal@justice.go.ke communications@ag.go.ke
T: +254 733 241111