



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
CIVIL CASE. 295 OF 2017
VEHICLE AND EQUIPMENT LEASING

LIMITED..... PLAINTIFF

VERSUS

JAMII BORA BANK LIMITED.....DEFENDANT

RULING

Introduction

1. This is a Motion.
2. It was instituted under urgency by the Plaintiff (“the Applicant”) who seeks various positive as well as negative injunctive orders. Additionally, the Applicant seeks orders that the injunctive orders if any be enforced by the police service. Finally, the Applicant asks the court to command compliance by the Respondent with Section 33B of the Banking Act (Cap 488) of the Laws of Kenya (“the Act” as to statutory interest rate(s).
3. The application is opposed by the Defendant (“ the Respondent”)

Background facts

4. In order to contextualize the application it is necessary to briefly set out the facts which precipitated this motion. The facts may be gleaned from the founding affidavits by the Applicant’s director Pauline Wambui sworn on 13 July 2017 and 17 July 2017 as well as the intervening affidavit filed in reply by the Respondent.
5. It is common cause that the relationship between the parties is that of a banker and customer. Upon the Applicant’s application for credit facilities in May 2015, the Respondent agreed to advance the Applicant an aggregate sum of Kshs. 600,000,000/= by way of an asset backed finance facility and invoice discounting facility. The asset-backed finance facility constituted Kshs. 500,000,000/= of the amount advanced while the invoice discounting facility fetched the remainder Kshs. 100,000,000/=. With the terms subsequently agreed and amended, the repayment of the asset backed finance facility was settled at Kshs. 12,159,028/56 over a period of sixty (60) months. The invoice discounting facility was in the meantime converted into a term loan facility with a monthly repayment of US \$ 81,488.45 over a period of 8 months.

6. By way of security and additional assurance for repayment, the Applicant created a Vehicle and Asset Finance Agreement granting the Respondent a non-possessory security over the financed assets. The Applicant also created a Deed of Assignment of receivables as well as a general Deed of Assignment over the Applicant's movables in favour of the Respondent.

7. Perhaps due to financial woes, in 2016, the Applicant fell into default.

8. It is further common cause that the Respondent then made demands for the arrears to be settled. The Applicant reassured the Respondent of the Applicant's commitment to make good the default, clear the arrears and regularize its accounts with the Respondent. This was never to be and in July 2017, presumably following further default on the part of the Applicant, the Respondent moved to realize its security.

9. The Respondent repossessed the non-possessory motor vehicles under the Vehicle and Asset Finance Agreement as supplemented by the Deed of Assignment. This action by the Respondent prompted the Applicant to launch the instant motion.

The motion

10. Essentially, the Applicant seeks relief in its motion on the following grounds:

10.1 The Respondent has violated the Banking Act *in re* rates of interest chargeable.

10.2 The Respondent has contravened the security agreements by illegally repossessing the assets constituting the security that is to say motor vehicles/equipment without any proclamation notice to the Applicant and when the Applicant was not in default.

10.3 The Respondent has relied on an illegality to enforce its rights.

11. The Applicant contends that it has a prima facie case with chances of success and that it is bound to suffer irreparably if the court does not intervene: see **Giella v Cassman Brown & Company Ltd [1973] EA 358**.

12. The Respondent essentially opposes the motion. It denies the allegations contained in the Applicant's founding affidavit and insists that the Applicant was not only in default as far as the underlying transactional agreement was concerned but was also in breach of its positive obligation to voluntarily surrender the subject security to the Respondent.

The arguments

The Applicant submits

13. Ms. Stella Muraguri urged the Applicant's case.

14. Passionately, Ms. Muraguri sought to establish that the Applicant was never in default. Counsel asserted that the default was a creature of the Respondent's blatant non-observance of the law. Counsel insisted that the Applicant had to its credit with the Respondent no less than Kshs. 8,000,000/=. Counsel denied that the Applicant was in arrears.

15. According to Ms. Muraguri, the Respondent had insisted on charging the illegal rates of interest yet the Act now regulated the rates chargeable by the licensed banks. Contractual rates were no longer applicable but rather statutory interest rates were. Ms. Muraguri contended that even though the Applicant's facilities were approved and advanced prior to the commencement of s.33B of the Act, the statutory rates were applicable to all credit facilities after the effective date of 14 September 2016. Ms. Muraguri insisted that it was such unlawful and illegal interest rates which had led to the default and hence a clog on the Applicant's equity of redemption and for this proposition counsel relied on the case of

Sharok Kher Mohammed v Southern Credit Banking Corporation Limited [2008]eKLR.

16. Ms. Muraguri further submitted that though the security documents in favour of the Respondent were stamped, the same had not been registered. In consequence, the Respondent had proceeded on the basis of an illegality whilst repossessing and attaching the odd 20 motor vehicles. Counsel contended that the Respondent could not rely on the security documents to realize its security as there was a clear illegality.

17. Finally, it was also the Applicant's contention that the Respondent had failed to follow the correct procedure whilst repossessing the motor vehicles, the subject of this motion. According to Counsel, the Respondent was under an obligation to first notify the Applicant of the breach and call for the delivery up of the security pledged. Only upon non-delivery could the Respondent proceed with proclamation and attachment.

The Respondent submits

18. On behalf of the Respondent, Mr. Daniel Njoroge submitted that the Applicant was not before the court with clean hands as there was evident default which had been admitted. Counsel referred the court to letters by the Applicant seeking the Respondent's indulgence and undertaking to remit payments.

19. On the claim that the Respondent had levied illegal interest, counsel pointed out that the facilities in question had been advanced and the agreements executed prior to the commencement of the Banking (Amendment) Act. Counsel contended that s.33B of the Act did not apply to the credit facilities currently being enjoyed by the Applicant. Additionally, the Respondent's counsel submitted that the principal amount and interest had been agreed upon and predetermined at the inception of the facility.

20. With regard to the security documents, Mr. Njoroge contended that there was no law that placed an obligation upon the Respondents to register the security documents. Further, according to counsel, the failure to register the documents did not affect the contract between the Applicant and the Respondent. In this regard, continued counsel, the security documents conferred upon the Respondent liberty to repossess the pledged assets and re-sale the same, without any prior notification.

21. Mr. Njoroge relied on the case of **Joseph Okoth Waudi v National Bank of Kenya Ltd [2006] eKLR** for the proposition that where there was proven default, a creditor had the right to realize his security and further that a dispute as to the amounts due was never reason to restrain the realization of security.

Determination and Analysis

22. I have perused the documentation filed herein. I have also heard the respective counsel. The core question is whether the Applicant is entitled to the reliefs sought at this intermediary stage on the basis of having established a prima facie case with a probability of success.

Of prohibitory and mandatory injunctions

23. The guiding principles in an application for prohibitory injunctions at an interlocutory stage are clear. I need not detail the same in this ruling save to point out that an applicant must show a prima facie case with a probability of success: see **Giella v Cassman Brown & Company Ltd [1973] EA 358**. He has to demonstrate more than an arguable case and not simply raise issues: see **Mrao Ltd v First American Bank (K) Ltd & Others [2003]eKLR 123**.

24. As the Applicant also seeks a positive (mandatory) injunction, I feel constrained to rehash briefly the approach by the court to mandatory injunctions.

25. At this intermediary stage, there is need to be satisfied that special circumstances exist and the case is a relatively clear one so as to invite a mandatory injunction: see **Kenya Breweries Ltd v Okeyo [2002] 1 EA 109**. The clarity should be as to get the court to feel a high degree of assurance that at trial it (the

court) will be vindicated that the mandatory injunction had indeed been rightly granted: see **Shepherd Homes Ltd v Sandham [1970] 3 All E R 412**.

26. The standard for mandatory injunctions is higher than that required for prohibitory injunctions. An “unusually strong and clear” case is expected to be established in the case of the former. However, even where the court is unable to feel any high degree of assurance that the applicant will certainly establish his right at trial, there may still be circumstances where it is appropriate to grant a mandatory injunction at an intermediary stage. The circumstances will exist where the risk of injustice, if the injunction is not granted outweighs the risk of injustice if it is granted: see **National Commercial Bank of Jamaica Ltd v Olint Corporation Limited[2009]1 WLR 1405**.

27. The court ought to be satisfied as well that the injunction if issued will be easily complied with no injustice or unnecessary hardship being occasioned to the person complying.

28. I must also point out that the issuance of any injunction is an exercise of discretion in equity. The principles and maxims of the equity will also guide the court and if justice is to be served and not abused, an injunction will issue: see **Bonde v Steyn [2013] 2 EA 8**. The court though must refrain from making any definitive findings of law or fact. It must not hold a mini trial: see **First Choice Mega Store Ltd v Ecobank Kenya Ltd [2017]eKLR**.

Section 33B of the Act construed

29. The Applicant’s chief complaint against the Respondent is that the Respondent has acted illegally and unethically by levying an interest rate which is contrary to statute. Reference was copiously made by the Applicant to s.33B of the Act even as the Respondent countered that the facilities in question were advanced well before the statutory rates of interest came into effect.

30. It was the Respondent’s contention that the interest-rates legislation did not apply retroactively to credit facilities in existence as at 14 September 2016.

31. To assist in resolving the dispute herein, an interpretation of s.33B of the Act, in my view, is warranted even though the parties did not address me on the interpretation angle. Claims of non-retrospectivity demand that I endeavor to construe the statute even at this interlocutory stage.

32. Section 33B of the Act came into operation on 14 September 2016 being introduced by the Banking (Amendment) Act No 25 of 2016. It reads as follows as follows:

33B.

1. A bank or a financial institution shall set

a. the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the base rate set and published by the Central Bank of Kenya; and

b. the minimum interest rate granted on a deposit held in interest earning in Kenya to at least seventy per cent, the base rate set and published by the Central Bank of Kenya.

2. A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law.

3. A bank or financial institution which contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings or in default, the Chief Executive Officer of the bank or financial institution shall be liable to imprisonment for a term not less than one year.

33. I must start by mentioning that I am conscious of the existence of the strong presumption that

legislation is never intended to be retrospective or retroactive. As the Supreme Court stated in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others** [2012]eKLR:

[61]As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. (Halsbury's Laws of England, 4th Edition Vol. 44 at p.570). [emphasis mine]

34. I also know that legislation is never meant to invalidate that which was previously valid or vice versa. Legislation is never intended to inhibit existing rights or impair obligations. Legislation is always considered to affect only future matters. These presumptions will however be rebutted where statute states so expressly or where out of necessary implication the intention of the legislature as expressed in the wording of the legislation, indicates the contrary. It is also crucial to note that presumptions however strong ought to merely aid the interpretation of statutes and must yield where the intention of the legislature emerges.

35. In the instant case, it is common cause that s.33B of the Act does not expressly provide that it is intended to apply retrospectively. The question would thus be whether there may be retrospective application by necessary implication.

36. Section 33B is a regulatory provision and, for now, I would adopt a purposive approach in considering s.33B of the Act and in the process also seek out the mischief which the legislature sought to address.

37. The purposive process invites a consideration of the purpose as well as the intent of the legislature which emerges from the language of the enactment or any other source like the Hansard. In **Maunsell v Olins** [1975] AC 373 the purposive approach was explained as follows:

“The first task of a court of construction is to put itself in the shoes of the draftsman – to consider what knowledge he had and, importantly, what statutory objective he had ...being thus placed...the court proceeds to ascertain the meaning of the statutory language.” (per Lord Simon of Glaisdale)

38. Returning to s.33B of the Act, I must also point out that if non-retrospectivity will lead to an absurdity or practical injustice, then it ought to be inferred that the section was intended to apply retrospectively. The court should not end up with any absurdity, or repugnance, for that matter.

39. My view and reading of the wordings of s.33B of the Act appear to point that it was intended to cure a situation where credit providers would not dictate their line of benefit to consumers of credit. The need for credit control dictated the statutory interest under s.33B. The objective was to restrain and eradicate injustice fetched on credit consumers by high and uncontrolled interest rates, hence the express capping of rates.

40. Law as a social tool does not operate in a vacuum. The mischief intended to be cured by Parliament, in my view, was the run-away rates of interest then allegedly being levied by licenced banks and financial institutions. This, it may be safe to conclude, was catered for by s.33B (2). One must also be conscious of the fact that as at the time of the amendment and introduction of s.33B, there already existed thousands of Kenyans and other borrowers burdened by high and, occasionally, usurious interest rates. There was a hue and cry by the already burdened borrowers. It may be safe to infer, albeit not conclusively, that s. 33B (1) took care of the lot.

41. It is apparent that s.33B of the Act brought forth implementation challenges. The existing credit consumers sought to benefit from interest-capping. The banks and financial institutions on the other hand insisted on their already existing right, to charge and earn interest, not being inhibited. The nature of these

very proceedings exposes this conflict.

42. I would agree with Ms. Muraguri that, for as long as s.33B of the Banking Act is in force and there is in existence a credit facility, a bank ought to be obligated to observe the provisions of law as to statutory rates of interest. It would likely lead to an absurdity to argue that facilities which existed prior to 14 September 2016 may be subjected to any contractual, even usurious, rates notwithstanding the rather express prohibitory provisions of the Act.

43. My view as well is that, in the process of protecting the credit consumers from alleged possible usurious interest rates, the legislature did not intend to stifle credit or credit business. By the better reason, the legislature did not ignore the interests and rights of credit providers. One must thus not simply over-emphasize the rights of the credit consumers.

44. I hold the interlocutory view that s.33B of the Act does not apply retrospectively to affect and inhibit rights of parties (both credit providers and credit consumers) which accrued prior to 14 September 2016. However, s.33B applies to all interest which had not been levied or charged prior to 14 September 2016. Any interest, in my view, which was to be charged by banks after 14 September 2016 had (has) to be subjected to the provisions of the law, including s.33B. It would lead to an absurdity to allow interest to be charged highly as the credit giver deems. It would also lead to practical injustice on the part of the credit provider if the interest already charged and earned was to be vacated.

45. *In casu*, however, the Respondent has argued that the rate of interest was pre-determined, calculated and settled prior to 14 September 2016. That is to say, it was already earned and that right cannot now be taken away. Counsel urged that the only rate being levied was the default rate of 16%. Ms. Muraguri, for the Applicant, however thought otherwise and pointed to the interest clause in the Facility Letter of 8 May 2015 which clause provided that “*interest would be on a flat rate basis, calculated on a daily basis and debited monthly to the respective account*”.

46. My reading of the facility letter reveals that interest on the asset backed finance facility was pre-calculated and predetermined and agreed upon in May 2015. This is typical of asset backed finance facilities. The reference made to interest being calculated on daily basis and detailed monthly to the respective account could only be to the invoice discounting facility later merged and converted into a term loan. This particular invoice discounting facility does not however appear in dispute before me as neither counsel addressed it.

47. I take note of the fact that the said Facility Letter was also executed before s.33B came into effect. Additionally, the Applicant has also not set out any specific facts to show and support the contention that the Respondent was charging interest on the facilities above the statutory rate. Save for reference to the Applicant’s letter dated 5 May 2017 claiming that the Respondent was charging an exorbitant rate of interest contrary to statute, on the basis of the material laid before me it is not possible even prima facie, to state that the Respondent was charging a rate of more than 14% on the term loan or the asset backed finance facility.

48. Lastly, on the issue of interest, I must also state that ordinarily a dispute as to interest as of necessity invites a dispute on accounts and amounts due. The Applicant is in default and admittedly so. I would not in the circumstances of this particular case involving an asset backed finance facility, state that there is a prima facie case with a probability of success in so far as the issue of contractual vis-à-vis statutory interest rates is concerned.

Non-registration of security

49. It brings me to the Applicant’s concern that the Respondent relied on an illegality whilst seeking to realize its security.

50. In this respects, the Applicant stated that the Respondent despite having paid stamp duty on its security documents had failed to effect registration which was necessary to notify the whole world that

the Respondent had an interest in the various chattels (motor vehicles) and could seek to repossess the same.

51. Of great concern to me was the Respondent's brief retort that no law obligated the Respondent to register the security documents.

52. The security documents created by the Applicant in favour of the Respondent constituted a Vehicle and Asset Finance Agreement alongside a Deed of Assignment. Both expressly created non-possessory security by way of first legal assignment of all the Applicants present and future rights, titles, interest and benefits in the listed assets. The assets constituted motor vehicles and portable office furniture. The security was in the nature of a chattels mortgage, in my view.

53. The security was also created prior to the repeal of the Companies Act (Cap 486). Section 96(2)(c) of the now repealed Companies Act (Cap 486) demanded expressly that such instruments of security be registered, with the expressed effect of non-registration under the repealed Companies Act being that the security on the company's property or undertaking thereby conferred was void against any liquidator or creditor (third party).

54. Registration of security documents however serves an additional purpose besides merely protecting the secured creditor. It is not only a priority perfection requirement which has to be complied with to make the security effective against a liquidator, administrators and creditors. It is also a form of notice. It constitutes notice of existence of the instrument and, *a fortiori*, the contents of the instrument. The party searching the register and obtaining details of the registered instrument is entitled to inspect a copy of the registered instrument by seeking a copy either from the registry or the parties to the security.

55. Registration *per se* is, however, in my view, not a necessary step to render security unenforceable against the debtor himself. He is the grantor of the security interest. He needs no notice of the security. As against the debtor, the creditor's security interest will be deemed as perfected and effective on possession or where, non-possessory, on the completion (execution and stamping) of the security instrument.

56. Want of registration alone should not defeat a creditor's security interest as against the debtor, also for the basic reason that, equity treats as done that which ought to be done. Once therefore the security agreement is complete and the subject matter of the security is identifiable and the creditor has completed his part of the bargain by actually making the monetary advance, the security agreement will give rise to security in favour of the creditor immediately. The contract for security is no longer executory, it is deemed to have attached. The parties are then bound not just by the security but also the terms of the security agreement itself.

57. It brings me back to the instant case.

58. The Applicant's position is rather unique. It deals with third parties. It is disclosed as much to the Respondent. The Applicant's business entails, inter alia, the purchase and resale of motor vehicles to third parties by way of lease hire. The facility letter drawn by the Respondent captured this way back in May 2015. The third party purchasers would ordinarily be expected to conduct a search on the assets being purchased. There was need, in my view, to perfect the security by complying with the provisions of Section 96 of the Companies Act (now repealed).

59. The current contest however does not involve third parties though, I must appreciate, some may have been affected. The contest is between the creditor and the debtor. As between the two, the security which attached when the deeds were executed and stamped is still intact. The Respondent was/is entitled to enforce the same subject to compliance with the terms.

60. It was the Applicant's contention that the terms were not complied with. In particular, the Applicant pointed out that the Respondent never sought delivery up of the security assets. The Respondent admits not having issued a notification for delivery up but contends that the Applicant was in default and that demand had been made.

61. It is common cause that no notice, for delivery up of the motor vehicles the subject of security, was issued to the Applicant by the Respondent.

62. Having regard to the full set of affidavits filed in this matter. Having regard as well to the documents availed, I hold the view, for now, that the Applicant's contention that it was entitled to notice was justified. The nature of the Applicant's business simply dictated this. It makes better commercial and business sense to read into the Agreement between the parties that notice should be issued before repossession. It is reasonable to state that the Respondent did not expect the Applicant to be in continuous possession of the subject security but rather that the possession would often be in the hands of third parties. My reading of clause 3.4 (b), below, of the security agreement dated 6 April 2015 and which was copiously referred to by both counsel would lead me to conclude that the Applicant has established on a prima facie basis that it was entitled to a notice before the security assets were repossessed by the Respondent.

63. Clause 3.4 (b) in so far is relevant reads as follows;

i. ...the customer will at the customers own expense deliver up possession of the goods to the Bank or a purchaser at such address within Kenya as the bank may require and on default, the customer will indemnify the bank against all loss and expense sustained by the bank as a result of such default including but not limited to the amount of any liability the bank may incur to any purchaser by reason of the customers default.

ii. In the event of the customer failing to deliver up possession of the goods to the bank or a purchaser on such resale as provided in the preceding sub-clause, the bank or its agents may immediately thereupon or at any time thereafter without any previous or further notice or concurrence of the customer enter upon any lands or premises whereon the goods for the time being may be and take possession thereof, and ..."

64. The clause is, in my view relatively clear. The Respondent ought to have notified the Applicant when delivery up of possession of the assets the subject of the security was required. The Respondent could then only repossess where no such delivery was made. It mattered not whether the Respondent who had property in the goods had actually sold the assets to third parties or not.

65. In the instant case, no notice was given prior to repossession. The Respondent made a demand for payment but did not call in the security. The Respondent then proceeded to repossess the assets then in the hands of third parties. This was, in my view, an apparent breach of the agreement between the parties. The circumstances were also such that it must be taken that the Respondent knew the nature of the business being conducted by the Applicant. It was simply to the effect that the goods ordinarily would not be in the hands of the Applicant, hence the need for a notice.

66. I view it that the Applicant has done enough to show that in the special circumstances of this unusual case the mandatory injunction ought to issue. I also view it that the Applicant has done enough to establish a clear case to deserve such a mandatory injunction.

Conclusion and disposal

67. In conclusion, I summarize my findings as follows.

68. Firstly, the Applicant has in my view established a prima facie case that the Respondent ought not to have proclaimed and repossessed the motor vehicles without prior notification and demand being made upon the Applicant to deliver up the same.

69. Secondly, while I am satisfied, on a prima facie basis, that s.33B of the Act is applicable to any interest intended to be charged but not yet charged or accrued, in the instant case the interest seems to have been pre-determined and pre-charged taking it outside the ambit of s.33B of the Act. The wording of the section does not appear to be automatically applicable to already subsisting advances but it is

instructive that while subsection (1)(a) dictates the interest rate applicable to and “chargeable for a credit facility in Kenya”, subsection (2) prohibits the execution of any lending which is contra s.33B. This, in my view, is a pointer that the interest covered was that which had not been actually calculated and earned. The Respondent may for now not charge or levy any interest contrary to the Act.

70. Thirdly, I also hold the view that the non-registration of a security instrument does not affect the effect or efficacy of any security as betwixt a creditor and a debtor. However there ought to be strict compliance with the contractual obligations under such security. In the instant case, there was evident non compliance when no notice was issued prior to repossession. The non-compliance may lead to unnecessary hardship on the Applicant.

71. The Applicant has done enough to show that that though it may be in apparent default it is entitled to some of the orders sought. I am also cognizant of the fact that as the central complaint focused on want of notice and alleged unlawful interest, it would be apposite as a court of equity to fashion orders in a way as to balance the parties’ respective interests.

72. I make the following orders by way of disposal:

i. The Defendant, its servants, employees, agents and or nominees are hereby ordered by way of a mandatory injunction to release to the Plaintiff motor vehicles detailed in paragraph 4 of Amended Notice of Motion namely motor vehicles registration numbers KCD 602H, KCD 249P, KCE 932M, KCE 908L, KCE 779M, KCE 987M, KCE 259H, KCE 778M, KCE 726M, KCE 469U, KCE 468U, KCE910M, KCE 730H, KCE 903L, KCF 400E, ZF2126 Trailer, KCF 292D/ZF1729, KCF 402E/ ZF1730 and KCA 463T

ii. The Defendant, its servants, employees, agents and or nominees are hereby restrained by way of a prohibitory injunction from attaching or selling or disposing of the Plaintiff’s motor vehicles detailed in paragraph 4 of Amended Notice of Motion namely motor vehicles registration numbers KCD 602H, KCD 249P, KCE 932M, KCE 908L, KCE 779M, KCE 987M, KCE 259H, KCE 778M, KCE 726M, KCE 469U, KCE 468U, KCE910M, KCE 730H, KCE 903L, KCF 400E, ZF2126 Trailer, KCF 292D/ZF1729, KCF 402E/ ZF1730 and KCA 463T pending hearing and determination of this suit.

iii. The above order (ii) is conditional upon the Plaintiff continuing to pay and meet its monthly obligations to the Defendant and in the event of default the Defendant will be at liberty to issue appropriate notices under the security documents to the Plaintiff for delivery up of the assets constituting the security.

iv. The Defendant to immediately and in any event not later than fourteen days from the date of service of this order supply the Plaintiff with a detailed account showing any interest charged on the credit facilities since 14 Sept 2016.

v. Liberty to apply to either party.

vi. The costs of the application are awarded to the Plaintiff.

Dated, signed and delivered at Nairobi this 31st day of July 2017.

J.L.ONGUTO

JUDGE

In the presence of :

S. Muraguri for the Plaintiff

Munyu holding brief for Daniel Njoroge for the Defendant

A. Atelu- Court Assistant