



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**COMMERCIAL CAUSE NO 3 OF 2016**

**JAHIR SHEIKH SAID INVESTMENT LTD**

**TAHIR SHEIKH GRAIN MILLERS LTD.....PLAINTIFF**

**-VS-**

**KENYA COMMERCIAL BANK LTD.....DEFENDANT**

**22/11/16**

Coram

Before Hon. Justice P.J.O. Otieno

Court Asst. – Linda

Mr. Mutua for the plaintiffs

Mr. Munyao for the defendant

HCC No. 9 of 2016

Ms Mburu for the plaintiff in HCC 9/2016

Mr. Mutua for Mureithi for 2<sup>nd</sup> & 3<sup>rd</sup> defendant

Mr. Munyao for the 1<sup>st</sup> defendant

HCC No. 10 of 2016

Mr. Mutua for the plaintiff

Mr. Munyao for Muriithi for 1<sup>st</sup> & 2<sup>nd</sup> defendant and appear for the 3<sup>rd</sup> defendant

HCC No. 74 of 2016

Mr. Balala for the plaintiffs

Ms. Mbura for the defendants

HCC No. 86 of 2016

Mr. Balala for the plaintiff

Mr. Mutua for the 1<sup>ST</sup> defendant

Ms Moka for Mrs. Mwangi for 2<sup>nd</sup> & 3<sup>rd</sup> defendant

Later at 3.00pm

Corum as before

**COURT: FURTHER DIRECTIONS OF CASE CONFERENCE**

On the 4/10/2016 this Court gave directions it viewed were appropriate to move these file (5) files forward by way of fast tracking them. At that time the court took the view, upon conferencing with the advocates for the parties, that the questions of validity and priority of the securities, being debentures, ran through all the files and being therefore directly determinant on the propriety of the appointment of an administrator on the affairs of the 2<sup>nd</sup> plaintiff. The three issues were deemed able to determine substantial issues between the parties as threshold issues. In order to meet its target of expeditious disposal, the court gave conservatory orders stopping all the creditors from taking any precipitate action towards realisation of the securities in dispute.

This matter was therefore set for today for the parties to discharge their duties to court under section 1A(3) of the Act by considering disposing the files by way of case stated under order 35 Civil Procedure Rules. It was not to be. When the parties appeared before me only Mr. Balala, who appears for the plaintiffs in HCC No. 74 and 86 of 2016 support the approach proposed by the court while Ms. Moka was, so to speak, indifferent on the way forward.

Mr. Mutua, Mr. Munyao and Ms. Mburu all acting for the three banks express the anxiety that the claims in the suits being colossal it would be difficult for them to explain to their clients how the matter was disposed of in a summary manner. They were equally heistant to abandone the applications and proceed to hearing of the suits even after the court pleaded with them to consider that the time taken to hear and determine the applications would be more or less be the same as the time required to hear and determine the suits.

I have heard the counsel and their desired approaches. I appreciate that they act for clients being the disputants and that I should play the role of the disinterested arbiter. That however, is not to say that I abandon my duty to be incharge of the litigation as the driver in order to achieve the purpose of the court – which is to determine the matter or dispute in a just, timely and proportionate manner.

This court currently gives dates for hearing of applications in March – April 2017. If I decide to hear the 5 applications separately I see myself making my determinations mid 2017 or later. At that time there would still be no roadmap to handle the real dispute in the suits. I see the suits overlapping into 2018 and beyond. It shall in that event jumped into the dates of overdue case. This ought not to be allowed.

Ms. Mburu says her clients exposure in these litigation runs into 9 or so billions Kenya shillings and has led to his client being down-graded by the Regulator. Such will not only affect the bank but the banking public and the entire financial sector with obvious effect on the economy of the nation. I don't believe that a court of law need to be oblivious or indeed indifferent to such far reaching reparations. The court must contextualise the climate under which it operates and the societal larger interests.

To me delay is not a virtue in determination of legal disputes. I did set the roadmap I believed and still believe will fast track these files. I will keep that road map undetracted. I will reiterate that the applications for interlocutory reliefs be abandoned to enable the trial and determination be realised.

For that matter, the conservatory order's issued on 4/10/2016 will be preserved on terms that all the matters are heard on the merits and expeditiously.

To achieve that purpose, I will tinker with my directions and order that instead of having the 5 files together, they will be dealt with in two batches.

1. HCC No. 3, 9 & 10 of 2016 will be heard by this court and such hearing will be preceded with the determination of the three isolated issues whether in that order or otherwise.
2. HCC No. 74 & 86 of 2016 will be dealt with before **Njoki Mwangi J**, in a manner as she shall direct on the 19/12/2016 when those matter will be mentioned before her.

For HCC No. 3, 9 & 10 of 2016, the same will be mentioned before this court on 19/12/2013 on which day the advocates shall address the court on the threshold issues as identified on 4/10/2016. It shall proceed by way of case stated.

These directions shall be typed and placed on each of the files. I continue to implore the parties not to shun negotiations and to avoid delay where justice would demand otherwise.

**HON. P.J.O. OTIENO**

**JUDGE**

**22/11/2016**