



**East African Cables PLC v Equity Bank (Kenya) Limited & 2 others (Civil Case E277 of 2023) [2025] KEHC 3507 (KLR) (Commercial and Tax) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3507 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E277 OF 2023  
F GIKONYO, J  
MARCH 20, 2025**

**BETWEEN**

**EAST AFRICAN CABLES PLC ..... PLAINTIFF**

**AND**

**EQUITY BANK (KENYA) LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE WERU ..... 2<sup>ND</sup> DEFENDANT**

**MUNIU THOITHI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application for consideration is a motion on notice dated 6<sup>th</sup> February 2025 brought by the plaintiff under Orders 50 Rule 6 and 50 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act*. The plaintiff seeks a review of the orders of 18<sup>th</sup> October 2024 through an extension of the time required to comply with the repayment of the debt owed to the 1<sup>st</sup> defendant.
2. The grounds are set out in the body of the application and the supporting affidavit sworn by the plaintiff's managing director, Paul Muigai on 6<sup>th</sup> February 2025.
3. In brief, the grounds are that the plaintiff, through its parent company, TransCentury PLC, immediately after delivery of the ruling, put several mechanisms, arrangements and programs and systems towards liquidation of the debt. It approached several financial institutions to secure funds to liquidate the debt. TLG Africa Growth Impact Fund Corporate Management Solutions (Cayman) Limited registered in Cayman Islands, United Kingdom, ("TLG") accepted to avail funds to liquidate the entire outstanding debt of the plaintiff and TransCentury. However, it has not met the 120 days'



timeline given to settle the debt due to the large sums of money involved, the complexity of the transaction and delays due to the Christmas holidays.

### **1<sup>st</sup> Defendant's Response**

4. In opposing the application, the 1<sup>st</sup> defendant/ respondent filed grounds of opposition dated 10<sup>th</sup> February 2025, a replying affidavit by its Manager Legal Services, Kariuki King'ori on 10<sup>th</sup> February 2025. The key points are that the court is functus officio concerning the plaintiff's injunction application dated 19<sup>th</sup> June 2023 and therefore lacks jurisdiction to grant the orders sought and that if the plaintiff was aggrieved by the time granted to repay its debt that is a matter to be taken up on appeal.
5. The 1<sup>st</sup> defendant deposed that the plaintiff has not honoured its obligation to pay monthly instalments of KES. 27,442,887/- per month to repay the credit facilities advanced. It lamented that since 18<sup>th</sup> October 2024, the plaintiff has not communicated any proposals to settle the outstanding debt of Kshs. 2,254,216,791/- as at 7<sup>th</sup> January 2025. It indicated that it was unaware of the purported efforts before the instant application was filed. It acceded that the plaintiff paid some amounts since the proceedings were instituted but indicated that the payments fell short of the required monthly payment.
6. The 1<sup>st</sup> defendant contested the correspondence attached as proof of the plaintiff's efforts to raise the outstanding debt as they relate to TransCentury PLC, not the plaintiff. It highlighted that emails between TransCentury and some of the financial institutions approached do not show that the plaintiff has secured funding to settle the outstanding debt.
7. The 1<sup>st</sup> defendant further indicated that TLG, which is undertaking due diligence, has not confirmed that it will finance the plaintiff; that the Head of Terms from TLG is for debt financing for a separate entity, AEA Limited and that therefore, the plaintiff has not given any justification for the request for an additional 6 months to pay the debt owed to the 1<sup>st</sup> defendant.
8. The 1<sup>st</sup> defendant also claimed that it received the letter dated 3<sup>rd</sup> February 2025 from TLG requesting a 12-week extension on 10<sup>th</sup> February 2025, after the present application had been filed and the court given directions.
9. As regard the efforts to raise the outstanding debt through sale of shares and property, the 1<sup>st</sup> defendant confirmed that it is aware of the proposal to sell 51% of the shares of East African Cables (Tanzania) Limited to Msufini Limited which is not concluded. It indicated that payment thereof would only settle part of the outstanding sum and not even cover the arrears of KES 919,050,040/-.
10. The 1<sup>st</sup> defendant denied knowledge of any proposed sale of LR No. 209/6982/2 and the alleged agreement between the plaintiff and Impala Glass Industries Limited. It pointed to the unsigned and undated agreement for sale that was produced and asserted that it has not consented to the sale as the chargee.
11. The 1<sup>st</sup> defendant highlighted the dates when the matter was adjourned either at the plaintiff's instance or due to other factors causing further delays and a significant increase of the plaintiff's debt. It contended that the value of the debt continues to increase and the plaintiff is not required to provide additional security. For this reason, it submitted that if it is restrained from realising its securities any further, there is a real risk that the additional debt accrued will be unsecured and it shall suffer irreparable loss as it will not be able to recover the amounts outstanding after its securities are realized.
12. The 1<sup>st</sup> defendant relied on Republic v Advocates Disciplinary Tribunal Ex Parte Apollo Mboya [2018] eKLR to argue that the applicant has not demonstrated the grounds for review under Order 45 of the Civil Procedure Rules as read with Section 80 of the *Civil Procedure Act*. It also relied on Nakuru



Industries Limited v Sirbrook (K) Limited [2017] eKLR, to argue that a court should not be asked to sit on appeal on its own decision.

## **2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Response**

13. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants/ respondents filed grounds of opposition dated 7<sup>th</sup> February 2025. Like the 1<sup>st</sup> defendant, they faulted the applicant for delay in applying for more time to comply with the order, contending that it could have either striven to comply with the order or sought an extension immediately after the order was made. They also complained that the applicant has not engaged them in the steps taken towards settling the debt owed to the 1<sup>st</sup> defendant since their appointment as receivers in June 2022, yet their appointment was not suspended and only the taking control of the plaintiff was suspended. They further posited that they would be prejudiced if the extension is granted because the applicant's conduct discloses that it is open to dissipating its assets without informing the receivers.
14. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents further contended that there is no proper basis for the court to exercise discretion to allow the extension. This is because the arrangement that the application is based on is non-binding and has no certainty of closure, and further due to the applicant's conduct of sitting on the court's orders for over two years and using them as a shield from meeting obligations.
15. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents challenged the applicant's notion that their appointment would cause disruption and damage its business, claiming that it is speculative and cannot be a basis for the extension. They pointed out that the proposition had been raised earlier and considered before the orders were granted and therefore cannot be re-litigated. Lastly, they added that the appointment of receivers does not preclude the shareholders from raising funds to repay the 1<sup>st</sup> defendant.

## **Submissions**

16. The application was canvassed through oral submissions on 11<sup>th</sup> February 2025. Counsels adopted their submissions in HCCC E276 of 2023 save to add that this matter is distinguishable in that the plaintiff has made payments in instalments.
17. Mr. Nyachoti for the plaintiff reiterated that there were efforts made to various financiers to liquidate the outstanding debt. He highlighted that the plaintiff is a holding company and it is sourcing funds for all its subsidiaries including EA Cables PLC Ltd. He denied that the plaintiff went to slumber after the interim orders of 19<sup>th</sup> June 2023 were granted. He pointed out that TLG has committed to shoulder the responsibilities for paying off all the debts for the plaintiff and its subsidiaries through a letter dated 3<sup>rd</sup> February 2025. He submitted that the extension is meant to allow TLG to finalize due diligence due to the magnitude of the debt. He added that the efforts are real and will yield results rather than allow receivership.
18. Mr. Nyachoti also mentioned that the application is brought under Order 50 Rule 6 and Section 3A of the [Civil Procedure Act](#) which clothe the court with inherent jurisdiction.
19. Mr. Kiragu Kimani, SC, for the 1<sup>st</sup> defendant mostly reiterated the points raised in the grounds of opposition and the replying affidavit. He also submitted that justice looks both ways. He contended that the plaintiff's conduct is indicative of a deliberate attempt to abuse the court process. He urged that the 120 days window granted was sufficient and that it assured the 1<sup>st</sup> defendant of realizing the debt. He also stressed that the inherent jurisdiction is reserved to do justice but not to allow a party in default to continue in default. He intimated that the letter of 3<sup>rd</sup> February 2025 was received by the 1<sup>st</sup>



defendant a day before the highlighting. He contended that the letter was from a stranger whose word cannot be a basis for the grant of the orders sought. He urged the court to dismiss the application.

20. Mr. Ogunde for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants fully associated himself with Mr. Kiragu's submissions save to add that the claim that the appointment of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants as receivers will damage the plaintiff was speculative.
21. In brief rejoinder, Mr. Nyachoti clarified that the extension sought is for 6 months, not in perpetuity; that the orders of 18<sup>th</sup> October 2024 was a twinning of two orders; that the plaintiff is only seeking extension of time to pay which will not affect the other limb; that the order allowed the 1<sup>st</sup> defendant to continue holding security hence there is no prejudice demonstrated; and that a party may appeal or review and the plaintiff opted to apply for a review. He urged the court to allow the application.

### **Analysis and Determination**

22. I have considered the application, responses and the submissions. The issue for determination is whether the applicant has made a case for review of the orders of 18<sup>th</sup> October 2024. The orders emanated from the ruling of 18<sup>th</sup> October 2024, where Justice Mabeya observed that:-

“ 35. The Court further notes that the injunctive orders are not indefinite and are intended to be temporary, allowing for a period during which the applicant can stabilize its operations and address its financial obligations. The Court finds that the 1<sup>st</sup> respondent will not be significantly harmed by granting the orders sought and in the manner proposed by the Court.

36. In any event, the balance of convenience lies in maintaining the status quo, albeit for a limited period, for the applicant to operate and repay the debt.

37. Accordingly, the Court finds merit in the application and it partially succeeds on the following terms:-

- a) That a temporary injunction is hereby granted, restraining the 1<sup>st</sup> respondent from exercising its power under the debentures to appoint administrators for a period of 120 days from the date hereof.
- b) The 2<sup>nd</sup> and 3<sup>rd</sup> respondent are restrained from acting as administrators of the applicant for a period of 120 days from the date hereof.
- c) If after the lapse of that period, the applicant shall not have repaid the debt, the injunction shall automatically lapse and the consequential right to enforce the securities shall attach.
- d) Costs shall be in the cause.

23. The court has discretionary powers to review its decision under Section 80 of the *Civil Procedure Act*. The discretion should be exercised on principle; in this case, presence of one or more of the grounds for granting review stated in Order 45 Rule 1 of the Civil Procedure Rules, to wit:

Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when



the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

24. The application should, however, be made without unreasonable delay.
25. The basis for the plaintiff's application is that it requires an extension of 6 months to settle the outstanding debt as it was in the process of negotiations with TLG which agreed to provide funds to clear its debt and that of its subsidiaries, including East African Cables PLC and AEA Limited.
26. The plaintiff fronted that it couldn't comply with the 120 days' timeline due to the complexity of the transaction, logistical challenges, and delays caused by the Christmas holidays. It submitted that TLG requires an additional three months to complete its due diligence and to finalise with the funding.
27. The 1<sup>st</sup> defendant argued that the application does not meet the threshold for review under Order 45 Rule 1 and that the request for extension is like asking the court to sit on appeal over its own decision. It asserted that the plaintiff has neither demonstrated an error on the face of the record nor discovery of any new and important matters of evidence that would warrant a review.
28. They averred that an error or mistake apparent on the face of the record is self-evident and does not require elaborate arguments to be established. *Paul Mwaniki v NHIF Board of Management* [2020] eKLR
29. The 1<sup>st</sup> defendant also argued that the plaintiff has not pleaded any sufficient reason for review which it argued ought to be analogous to the other grounds specified in the rules.
30. I agree with the 1<sup>st</sup> defendant; but acknowledge that it was not claimed that there is no error on the face of the record.
31. I also note that the negotiations with TLG came after the order of 18<sup>th</sup> October 2024. Therefore, they cannot claim discovery of any new and important matters which after the exercise of due diligence, was not within the plaintiff's knowledge or could not be produced at the time when the decree was passed or the order made.
32. However, is there 'any other sufficient reason' for review?
33. To advance the needs of justice, courts are vested with unfettered discretion to review a decree or order where there is sufficient reason; which need not be analogous to the other grounds set out in rule 45 of the CPR.
34. See the Court of Appeal in *Shanzu Investments Ltd v Commissioner of Lands* [1993] eKLR citing with approval, the decision in *Wangechi Kimita & Another v Mutahi Wakabiru Ca No 80 Of 1985* (Unreported) where it was held that:-

“any other sufficient reason need not be analogous with the other grounds set out in the rule because such a restriction would be a clog on the unfettered right given to the court by Section 80 of the *Civil Procedure Act*. The court further went on to hold that the other grounds set out in the rule did not in themselves form a genus or class of things with which the third general head could be said to be analogous.

The current position would, then, appear to be that the court has unfettered discretion to review its own decrees or orders for any sufficient reason.”

35. In arguing sufficient reason for review, the plaintiff indicated that it has made efforts to pay the debt by approaching various financial institutions. It produced various correspondences to that effect. The



evidence produced by the plaintiff shows that it made efforts to settle the debt. It produced a non-binding head of terms dated 13<sup>th</sup> January 2025 for debt financing of USD 8 Million offered by TLG. It also produced a letter dated 3<sup>rd</sup> February 2025 from TLG to the 1<sup>st</sup> defendant captioned “Request for 12 Week extension of deadline to facilitate refinancing of TranCentury Group’s Equity Bank loan”. In that letter it expressed its commitment to providing financial support to the plaintiff’s outstanding obligations to the 1<sup>st</sup> defendant. It also indicated that it was actively working with Kuramo Capital to finalize provision of a debt facility that will allow for the refinancing of the debt and contribute to the stabilization of the plaintiff’s financial position. The reason advanced for the non-compliance with the timelines is the due diligence process which should take longer because of the magnitude of the debt and the delays occasioned during the Christmas holidays.

36. However, the 1<sup>st</sup> defendant argued that TLG is a stranger to it hence unreliable; that TLG’s letter was received a day before the hearing. Moreover, the 1<sup>st</sup> defendant submitted that the delay is inordinate and that it stands to be prejudiced by further delays since the 120 days was meant to ensure that it is paid. It pointed out that the USD 8 Million offer has not crystallized to a solid agreement and that it would only cater to a portion of the outstanding debt of over KES 5,545,104,165/- as at 7<sup>th</sup> January 2025.
37. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants also expressed the view that the agreement is not certain to come to fruition.
38. Justice Mabeya’s rationale for granting the 120 days window through the orders of 18<sup>th</sup> October 2024 was that the balance of convenience lay in maintaining the status quo, albeit for a limited period, for the applicant to operate and repay the debt. He noted that: -

“ 22 ...the Court must weigh the interests of the applicant against those of the 1<sup>st</sup> respondent and assess whether maintaining the status quo would serve the greater good.

23. The facility advanced to the applicant was secured by the debenture as well as other securities. The record further demonstrates that there is an attempt by the applicant to secure more funding in order to maintain its operations and return to profitability. This is not a case where the borrower is running away from its obligations but rather seeks an arrangement to ensure the company is spared as it restructures the debt. There is further a show of good faith on the part of the applicant whereby even during the pendency of this suit, repayments were made.”

39. During the hearing Mr. Nyachoti indicated that the plaintiff made repayments totalling Kshs. 618,000,000/-. However, Mr. Kiragu stated that the Kshs. 618,000,000/- has been there since. He also stated that the repayments made were sporadic and totalled to Kshs. 170,000,000/-, little in comparison to the over Kshs. 2 Billion debt.
40. On 13<sup>th</sup> February 2025, the court granted a stay of the order for taking over the operations of the applicant until the ruling is delivered. It also directed that the matter be mentioned on 10<sup>th</sup> March 2025, for the applicant to intimate how much it will have paid to the 1<sup>st</sup> defendant.
41. During the mention, on 10<sup>th</sup> March 2025, Mr. Nyachoti indicated that the plaintiff had paid Kshs. 16,100,000/-. Mr. Ondieki for the 1<sup>st</sup> defendant however stated that Kshs. 13,600,000 was received, less than half of the monthly instalment. He claimed that this was either inability or refusal to pay which justifies the appointment of a receiver.



42. It is in the interests of justice for the court to balance the scales between the plaintiff, a large trading company and the 1<sup>st</sup> defendant, a secured creditor. The court ought to take a course that appears to carry the lower risk of injustice. *Films Rover International Ltd & Others v Cannon Film Salea Ltd* [1986] 3 All ER.
43. The plaintiff filed account statements showing that it paid Kshs. 16,100,000 between 25<sup>th</sup> February 2025 and 5<sup>th</sup> March 2025. This indicates good faith by the plaintiff in making the repayments. The plaintiff has also demonstrated that the negotiations with TLG are on course and due diligence is underway.
44. I, therefore, reiterate that “This is not a case where the borrower is running away from its obligations but rather seeks an arrangement to ensure the company is spared as it restructures the debt.”
45. I further reiterate that the objective of administration is to maintain the company as a going concern for the benefit of a company as well as its creditors. But, administration ought to be a last resort.
46. If the plaintiff is placed under administration at this juncture, the ongoing negotiations will be disrupted and hamper efforts to stabilize and loss of confidence from investors and stakeholders. The applicant seeks for little time to conclude refinancing arrangements with TLG and repay the debt in full.
47. On the other hand, the 1<sup>st</sup> defendant is holding significant securities to cover the debt.
48. Accordingly, I am persuaded that there is a sufficient reason for a review of the orders of 18<sup>th</sup> October 2024 through an extension of the timeline required for compliance. I opine that an extension of 90 days presents a lesser injustice in the circumstances. But, this being a trading company, it should continue making payments towards repayment of the debt whilst it seeks to crystalize the offer by TLG. And, given the history of the matter, this extension is granted only once to avoid prejudice to the 1<sup>st</sup> respondent or unwanted habit by the applicant.
49. In conclusion, the plaintiff’s application dated 6<sup>th</sup> February 2025 is allowed in the following terms: -
  1. The 1<sup>st</sup> respondent is restrained from exercising its power under the debentures to appoint administrators for a period of 90 days from the date hereof.
  2. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants are restrained from acting as administrators of the applicant for a period of 90 days from the date hereof.
  3. If the applicant shall not have repaid the debt at the expiry of the 90 days allowed herein, the 1<sup>st</sup> Respondent shall exercise the right to enforce the securities and appoint administrators of the company.
  4. The applicant should continue repaying the debt.
  5. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 20<sup>TH</sup> DAY OF MARCH, 2025.**

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**F. GIKONYO M**  
**JUDGE**

In the presence of: -



1. Kiragu Kimani SC./Ondieki for 1<sup>st</sup> defendant
2. Nyachoti for plaintiff
3. Ogunde for 1<sup>st</sup> & 2<sup>nd</sup> defendant
4. CA - Kinyua

