



REPUBLIC OF KENYA



**KENYA LAW**  
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**Trancentury Plc v Equity Bank (Kenya) Limited & 2 others (Civil Case E276 of 2023)  
[2025] KEHC 3531 (KLR) (Commercial and Tax) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3531 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E276 OF 2023  
F GIKONYO, J  
MARCH 20, 2025**

**BETWEEN**

**TRANCENTURY PLC ..... PLAINTIFF**

**AND**

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

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

**MUNIU MUTHONI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The instant proceedings were sparked when the 1<sup>st</sup> defendant placed the plaintiff under receivership in exercise of its powers under a floating debenture on 16<sup>th</sup> June 2023 and consequently appointed the 2<sup>nd</sup> and 3<sup>rd</sup> defendant as the administrators.
2. The plaintiff then filed an application dated 18<sup>th</sup> June 2023 challenging the receivership and seeking various injunctive reliefs against the defendants. On June 19, 2023, Justice Mabeya granted interim injunctive orders against the defendants thereby effectively suspending the receivership pending the hearing and determination of the application.
3. Through a ruling delivered on 18<sup>th</sup> October 2024, Justice Mabeya held as follows:-

“

- “48) 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.



49) 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 a receiver or receiver-managers for a period 120 days from the date hereof.
- b) The 2<sup>nd</sup> and 3<sup>rd</sup> respondent are restrained from acting as receiver/managers 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 realization of the securities shall attach.
- d) Costs shall be in the cause.

It is so ordered."

### **The application**

4. The plaintiff filed the notice of motion, dated 6<sup>th</sup> February 2025, under Order 50 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010; Sections 1A, 1B, 3A & 63 (e) of the Civil Procedure Act, seeking orders to vary, review or set aside the ruling of 18<sup>th</sup> October 2024 to extend the time required to comply with the repayment of the entire debt of Kshs 4, 498,539,973.00/- to the 1<sup>st</sup> respondent and for the exercising by the 1<sup>st</sup> respondent of its powers under the debenture dated 13<sup>th</sup> June 2013 as regards the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents as receiver managers by a period of six (6) months or any such other period as this court may deem fit and just in the circumstances.
5. The application is supported by the grounds on its body and the supporting affidavit sworn by the applicant's Group Chief Executive Officer, Ng'ang'a Njiiu, on 6<sup>th</sup> February 2025.
6. The applicant's case is that it approached various financial institutions including Access Bank (Kenya) PLC, Nexis Africa, Kuramo Capital, Benchmark International and TLG Africa Growth Impact Fund Corporate Management Solutions (Cayman) Limited registered in Cayman Islands, United Kingdom ("TLG") to secure funds to liquidate the said debt.
7. TLG agreed to provide funds to clear its debt and that of its subsidiaries, including East African Cables PLC and AEA Limited. However, due to the complexity of the transaction, logistical challenges, and delays caused by the Christmas holidays, TLG requires an additional three months to complete its due diligence and to finalise with the funding.
8. According to the applicant, an extension is in the interest of justice, as it will facilitate full debt repayment, prevent business disruptions, and protect employees and other stakeholders. It also contended that the appointment of Receiver/Managers would not improve its financial situation but disrupt ongoing operations and multibillion-shilling projects, which could generate additional funds for debt settlement. It further asserted that the application was brought timeously and that the respondents would not suffer prejudice if the extension is granted.



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

9. 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 2023. The salient 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.
10. The 1<sup>st</sup> defendant asserted that the plaintiff has over 16 months to settle the debt owed to the 1<sup>st</sup> defendant from when Justice Mabeya granted the interim injunction on 19<sup>th</sup> June 2024. It was also deposed that the plaintiff failed to repay the loan during the 120 days granted through the orders of 18<sup>th</sup> October 2024.
11. The 1<sup>st</sup> defendant complained that since 18<sup>th</sup> October 2024, the plaintiff has not reached out to it and that it was not notified of the efforts and progress to secure financing to settle the outstanding debt. It dismissed the email correspondence produced by the plaintiff, claiming that TLG has not committed to settle the debt as the correspondence shows that it is conducting due diligence to decide whether to advance a loan to the plaintiff.
12. The 1<sup>st</sup> defendant further pointed out that the head of terms dated 25<sup>th</sup> January 2025 from TLG is for debt financing for a separate entity, AEA Limited and for USD 8 Million which is less than the outstanding debt; 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.
13. The 1<sup>st</sup> defendant again submitted that it is an abuse of the court process for the plaintiff to wait until a week ahead of the expiry of the timeline given to apply for extension. It highlighted that the plaintiff has neither reached out to it nor communicated acceptable proposals to settle the outstanding debt.
14. The 1<sup>st</sup> defendant further deposed that the plaintiff owes the 1<sup>st</sup> defendant KES 5,545,104,165/- as at 7<sup>th</sup> January 2025, which sum continues to accrue interest; that the plaintiff has been in default for over 5 years and 3 months and that in the circumstances, it should be allowed to realise its securities.
15. The 1<sup>st</sup> defendant asserted that the longer the debt remains outstanding, the harder it will be to recover the monies advanced; that it is not in the public interest for the very substantial debt owed to remain outstanding as this increases the costs of borrowing for all Kenyans.
16. 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

17. 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.

18. 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.
19. 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**

20. The application was canvassed through oral submissions on 11<sup>th</sup> February 2025. 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.
21. 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.
22. 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.
23. 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.
24. 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**

25. 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.



26. The court has discretionary powers to review its decision under Section 80 of the *Civil Procedure Act*. The discretion should be exercised judiciously, not capriciously. The grounds for which discretion may be exercised are set out in Order 45 Rule 1 of the Civil Procedure Rules to be: 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, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”
27. 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.
28. The plaintiff explained that it was unable to comply with the 120 days’ timeline given due to the complexity of the transaction, logistical challenges, and delays caused by the Christmas holidays. It proffered that TLG requires an additional three months to complete its due diligence and to finalise with the funding.
29. 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.
30. They argued 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
31. 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.
32. According to the 1<sup>st</sup> defendant- and that has not been claimed- there is no error on the face of the record. I do note also that, the negotiations with TLG came after the order of 18<sup>th</sup> October 2024. Therefore, there is no 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.
33. However, it appears the applicant has grounded its application for review on ‘any other sufficient reason’.
34. Courts have expounded that, to advance the course of justice, the court has unfettered discretion to review a decree or order where there is sufficient reason which need not be analogous to the first and second prongs of error on the face of the record and discovery of new and important evidence.
35. The Court of Appeal in *Shanzu Investments Ltd v Commissioner of Lands* [1993] eKLR cited 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.”

36. Thus, therefore, is there ‘any other sufficient reason for review?
37. 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.
38. The plaintiff indicated that it has made efforts to pay the debt by approaching various financial institutions. It produced various correspondences to that effect. Indeed, 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 (valid until 21 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.
39. The court is aware of the 1<sup>st</sup> defendant’s argument 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 a portion of the outstanding debt of over KES 5,545,104,165/- as at 7<sup>th</sup> January 2025.
40. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant also weighed in and are of the view that the agreement is not certain to come to closure.
41. There is a debenture holder on the one side, with a statutory remedy of appointing a receiver to realize its security. But, on the other side, a company which seeks to run as a going concern whilst it pays its debts. And, in between, the law which must strike a proportioned balance. Which way?
42. The applicant has stated that appointment of Receiver/Managers would not improve the company’s financial situation but disrupt ongoing operations and multibillion-shilling projects, which could generate additional funds for debt settlement. This argument stems from the famous ‘Kiss of Death’<sup>1</sup> expression used in reference to receivership practice in Kenya; to a new impetus of insolvency laws-infusing rescue culture of viable businesses as a way of guaranteeing repayment of the debt and sustenance of the company as a going concern.
43. According to the applicant, an extension is in the interest of justice, as it will facilitate full debt repayment, prevent business disruptions, and protect employees and other stakeholders.
44. The defendants have argued that any extension will prejudice them as debenture-holders with remedy to appoint a receiver to realize their security. They also argued that the applicant is introducing a stranger whose word may not be guaranteed.
45. There is real tension here.

<sup>1</sup> Jambo Biscuits v. Barclays Bank (2002), Ringera J (as he then was)



46. The proposal by the applicant is to pay up the debt; and has put in place arrangements with potential investors. It appears reasonable, and will resolve the dispute once and for all. Extension of time does not rout the remedy to appoint receiver managers as was ordered by the court. But, is likely to ensure sustenance of the company as a going concern and repayment of the debt.
47. Accordingly, in the interest of justice, there is sufficient reason to review the time for repayment of the debt and appointment of the receivers. Nevertheless, any such extension should be given once to avoid prejudice to the defendants or unwanted habit by the applicant. Accordingly, the time for repaying the entire debt is extended with another 90 days from today.
48. In the upshot, the Court finds merit in the application and it partially succeeds on the following specific terms: -
- a. That the 1<sup>st</sup> respondent is restrained from exercising its power under the debentures to appoint a receiver or receiver-managers for a period 90 days from the date hereof.
  - b. The 2<sup>nd</sup> and 3<sup>rd</sup> respondent are restrained from acting as receiver/managers of the applicant for a period of 90 days from the date hereof.
  - c. If after the lapse of that period, the applicant shall not have repaid the debt, the 1<sup>st</sup> respondent shall exercise the power in the debenture and appoint receiver/receiver manager for the applicant.
  - d. The applicant to continue repaying the debt.
  - e. 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: -

Kiragu Kimani SC./Ondieki for 1<sup>st</sup> defendant

Nyachoti for plaintiff

Ogunde for 2<sup>nd</sup> & 3<sup>rd</sup> defendant

CA - Kinyua

