



**Jaribu Credit Traders Limited v Fidelity Bank Limited & another (Commercial Suit 647 of 2015) [2025] KEHC 5634 (KLR) (Commercial and Tax) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL SUIT 647 OF 2015**

**NW SIFUNA, J**

**MAY 7, 2025**

**BETWEEN**

**JARIBU CREDIT TRADERS LIMITED ..... PLAINTIFF**

**AND**

**FIDELITY BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SBM BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the Plaintiff's Application the motion dated 18<sup>th</sup> March 2024. The same was brought under Order 1 Rule 10, Order 9 Rule 9, and Order 45 Rule 1 of the Civil Procedure Rules. By it, the Plaintiff sought for orders that the consent order issued on 8<sup>th</sup> December 2017 to be reviewed and varied by amending the debt amount from Ksh 83,029,357= to Ksh 41,377,199/16, and/or in the alternative, the entire consent order be set aside and the 2<sup>nd</sup> Defendant be compelled to refund Ksh 23,191,434= paid under a null and void consent order, a temporary injunction restraining the 2<sup>nd</sup> Defendant from selling or interfering with L.R. No. 209/7XX4/7 be issued, a permanent injunction restraining the sale of the aforesaid property be issued, an order that the 2<sup>nd</sup> Defendant be compelled to execute a discharge for L.R. No. 209/7XX4/7 and hand over the title documents to the Plaintiff, and a mandatory injunction requiring the immediate release of the title documents and duly executed discharge from the 2<sup>nd</sup> Defendant to the Plaintiff.
2. The Application is premised on the grounds on the face of the motion and is supported by an affidavit sworn on the same day by Suresh Kantaria, the chairman of the Plaintiff's Board of Directors. He averred that the Plaintiff was formerly a customer of the 1<sup>st</sup> Defendant, but in 2017 the 1<sup>st</sup> Defendant sold its banking business and assigned its debt recovery rights to the 2<sup>nd</sup> Defendant. He further stated that the Plaintiff became aware of this assignment in June 2023 when the 2<sup>nd</sup> Defendant filed its



- response to the instant application. He contended that a consent judgment dated 8<sup>th</sup> December 2017 required the Plaintiff to pay Ksh 400,000= per month toward a debt of Ksh 83,029,357=.
3. The said Kantaria asserted that the aforesaid debt was overstated by over Ksh 40,000,000=, as the actual amount owed as of 28<sup>th</sup> October 2015 was Ksh 41,357,632/69, based on the 2<sup>nd</sup> Defendant's bank statements. He averred that the 1<sup>st</sup> Defendant did not disclose the assignment or provide accurate statements during the negotiations. Thus, misleading the Plaintiff into agreeing to the inflated debt amount. He further averred that the Plaintiff made payments from December 2017 to October 2022 under the mistaken belief that the debt was correct and only discovered the overstatement in 2022 through public information. Consequently, the Plaintiff demanded correction of the debt in February 2023, but the 2<sup>nd</sup> Defendant declined to make the correction.
  4. In opposition thereto, the 2<sup>nd</sup> Defendant filed a replying affidavit sworn on 24<sup>th</sup> May 2024 by Kevin Kimani the 2<sup>nd</sup> Defendant's Legal Officer. He averred that courts can only set aside a consent order in exceptional cases involving fraud, mistake, or misrepresentation, none of which have been demonstrated by the Plaintiff. He asserted that the consent order dated 8<sup>th</sup> December 2017 was entered into voluntarily and with legal representation. He claimed that as of November 2017, the Plaintiff owed the Defendant Ksh 124,443,484=, but the parties agreed to write off Ksh 41,414,127=, leaving a balance of Ksh 83,029,357=, the amount reflected in the consent order dated 8<sup>th</sup> December 2017. He stated that the consent sum arose from multiple banking facilities advanced to the Plaintiff, secured by a charge over all that parcel of land known as L.R. No. 209/7XX4/7.
  5. The said Kimani contended that the Plaintiff defaulted on its loan repayment obligations, leading to the issuance of a 90-day notice on 28<sup>th</sup> October 2015, followed by a 40-day notice on 29<sup>th</sup> January 2016. He asserted that at that point, the outstanding loan was Ksh 83,029,357/34. Mr. Kimani averred that the Plaintiff does not dispute the debt owed and has even made payments under the consent order until defaulting again in October 2022, after which it sought clarification on the outstanding amount. He contended that a permanent injunction cannot be granted through an interim application and maintained the matter was conclusively settled by consent. He emphasized that although the Plaintiff acknowledges owing Ksh 41,377,199/16, it has made no effort to pay the admitted sum.
  6. In rejoinder, the Plaintiff filed a further affidavit sworn on 3<sup>rd</sup> June 2024 by the said Suresh Kantaria, the Chairman of the Plaintiff's Board of Directors. He referred to a previously filed affidavit sworn on 20<sup>th</sup> June 2023, claiming that the 1<sup>st</sup> Defendant engaged in fraudulent conduct. He asserted that the fraudulent acts include inflating the debt amount, non-disclosure of material facts such as the sale of the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant in March 2017, the Plaintiff's debt being valued at only Ksh 8,566= during that transaction, executing a consent order on 8<sup>th</sup> December 2017 when the 1<sup>st</sup> Defendant no longer had legal standing and submitting misleading bank statements that ignored the discounted debt. He stated that after the sale, the 1<sup>st</sup> Defendant became a constructive trustee and no longer holds a valid interest in these proceedings.
  7. The Application herein was canvassed by way of written submissions. The Plaintiff's submissions were filed on 8<sup>th</sup> May 2024 by the law firm of Kamau Kuria & Company Advocates, while the 2<sup>nd</sup> Defendant's submissions were filed on 2<sup>nd</sup> July 2024 by the law firm of Mckay & Company Advocates.
  8. Dr. Kamau Kuria (SC), learned Counsel for the Plaintiff relied on the case of Chidhya (Kenya) Limited v. Africa Equipment & Engineering Power S.A (AEE Power S.A) [2020] eKLR and submitted that in as much as the 1<sup>st</sup> Defendant had the right to assign its rights to the 2<sup>nd</sup> Defendant, it could only assign the rights it actually held at the time of the assignment. In the premise, the 1<sup>st</sup> Defendant wrongfully purported to assign a debt of Ksh 83,029,357=, while it was only entitled to Ksh 41,377,199/16. Dr.



- Kuria referred to the Court of Appeal case of Nabro Properties Limited v. Sky Structures [2002] 2KLR, 299 at page 312 and argued that the Defendants fraudulently exaggerated and misrepresented the applicant's debt as Ksh 83,029,357=, to unjustly enrich the 2<sup>nd</sup> Defendant at the applicant's expense.
9. Dr. Kuria contended that under the law of restitution as established in the English case of Kleinwort Benson Limited v Lincoln City Council [1999] 2 AC 349 (HL), money paid by mistake is recoverable from the payee and agreements induced by mistake can be set aside. He cited the Court of Appeal case of Chase International Investment Corporation & Another v. Laxman Keshra & others [1978] KLR 143 at pg. 154 and asserted that over the years, the law of quasi-contracts has evolved into the law of restitution, now recognized by courts. Senior Counsel relied on the Court of Appeal case of Wasike v. Wamboko 1982-1988 KLR 625 and submitted that a consent judgment can be set aside on the same grounds as a contract which include fraud, mistake, misapprehension, or lack of knowledge of material facts,
  10. Ms. Muriranj, learned Counsel for the 2<sup>nd</sup> Defendant relied on several cases including the case of Hirani v. Kassam [1952] 19 EACA 131 and the one of Inter-countries Importers and Exporters Limited v. Teleposta Pension Scheme Registered Trustees & 5 others [2019] eKLR, and submitted that a consent order can only be varied, reviewed, or set aside where it is proven that it was obtained by fraud, collusion, an agreement contrary to public policy, mistake, and/or misrepresentation. She referred to the Court of Appeal case of Kuria Kiarie & 2 Others v. Sammy Magera [2018] eKLR and argued that it is trite law that fraud must be specifically pleaded with clear particulars and proven.
  11. However, in this case, in as much as the Plaintiff contends that the consent order dated 8<sup>th</sup> December 2017 was fraudulently obtained by the 1<sup>st</sup> Defendant, the particulars of fraud have neither been proven nor demonstrated. Ms. Muriranj contended that the Plaintiff relies on an incomplete, unauthenticated statement showing a balance of Ksh 63,498,485= as of 30<sup>th</sup> November 2017, which does not even capture the alleged balance of Ksh 41,377,199/16. Further, since the said statement lacks official authentication, it cannot conclusively prove that the debt was overstated.

### **Analysis and Determination.**

12. Upon consideration of the application herein, the affidavits filed in support thereof, the replying affidavit by the Defendant and the written submissions by counsel for the parties, the issues that arise for determination are:
  - Whether the consent order dated 8<sup>th</sup> December 2017 should be reviewed, varied and /or set aside;
  - Whether the 2<sup>nd</sup> Defendant should be compelled to refund the Plaintiff Ksh. 23,191,434/= paid under the said consent;
  - Whether a temporary injunction should issue against the 2<sup>nd</sup> Defendant restraining it from selling or interfering with LR No. 2X9/7XX4/7;
  - Whether a permanent injunction should issue against the 2<sup>nd</sup> Defendant;
  - Whether the 2<sup>nd</sup> Defendant should be compelled to execute a discharge for LR No. 2X9/7XX4/7 and hand over the title documents to the Plaintiff; and
  - Whether a mandatory injunction requiring the immediate release of the title documents and duly executed discharge should issue.



## **On Whether the Consent Order Dated 8<sup>th</sup> December 2017 Should Be Reviewed, Varied and /or Set Aside.**

13. It is not in contest that a consent judgment dated 8<sup>th</sup> December 2017 was entered into between the Plaintiff and the 1<sup>st</sup> Defendant, requiring the Plaintiff to pay the 1<sup>st</sup> Defendant an outstanding loan amount of Ksh 83,029,357= by making monthly installments of Ksh 400,000= with effect from 8<sup>th</sup> December 2017. The Plaintiff averred that the aforesaid outstanding loan amount was overstated by over Ksh 40,000,000=, since the actual amount owed to the 1<sup>st</sup> Defendant by the Plaintiff as of 28<sup>th</sup> October 2015 was Ksh 41,357,632/69. In the premise, the Plaintiff sought for an order reviewing and/or varying the said order by amending the debt amount from Ksh 83,029,357= to Ksh 41,377,199/16, and/or in the alternative setting aside the entire consent order.
14. It is trite law that any party seeking review of Court orders is bound by the provisions of Order 45 of the Civil Procedure Rules which provides as follows:
1. Any person considering himself aggrieved –
    - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
    - b. by a decree or order from which no appeal is hereby allowed,  
and who from the 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.
  2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
15. It is however noteworthy that the order the Plaintiff seeks to review, vary and/or set aside is a consent order. A consent order unlike any other order issued by a court and/or tribunal, is a binding agreement between parties, thus courts cannot interfere with such orders except where it has been demonstrated that the order was acquired by fraud, collusion, mistake, and/or misrepresentation. The Court of Appeal in *Inter-counties Importers and Exporters Limited v. Teleposta Pension Scheme Trustees* (Supra), considered under what circumstances a consent order may be set aside as follows:

“The principles that appertain to setting aside of a consent orders are well established in a line of cases including *Brooke Bond Liebig v. Mallya* (1975) EA 266 where Mustafa Ag. VP stated thus;

“The compromise agreement was made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been



any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.”

“And in the case of *Flora N. Wasike v. Destimo Wamboko* [1988] eKLR Hancox JA cited Setton on Judgments and Orders (7<sup>th</sup> edition) Vol 1 Page 124, and reiterated as follows:

“Any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and those claiming under them... and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable a court set aside an agreement.”

Essentially, the above cited authorities are clear that a consent Order will only be set aside if it can be demonstrated that it was procured through fraud, non-disclosure of material facts or mistake or for a reason which would enable a court [to] set it aside.

16. The Court of Appeal in *Samuel Mbugua Ikumbu v. Barclays Bank of Kenya Limited* [2015] KECA 390 (KLR) also considered the circumstances that would lead to a consent order and/or judgment being varied and/or set aside and observed as follows:

“The law on variation of a consent judgment is now settled. The variation of a consent judgment can only be on grounds that would allow for a contract to be vitiated. These grounds include but are not limited to fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the court, absence of sufficient material facts and ignorance of material facts.”

17. It is not disputed that the 1<sup>st</sup> Defendant advanced loan facilities to the Plaintiff, secured by a charge over all that parcel of land known as L.R. No. 2X9/7XX4/7. Subsequently, the Plaintiff defaulted in its loan repayment obligations and the 1<sup>st</sup> Defendant issued it with the requisite 90 & 40 days’ statutory notices, which led to the institution of this suit. It is not in contest that this suit was compromised vide a consent judgment dated 8<sup>th</sup> December 2017, which required the Plaintiff to pay Ksh 400,000= per month toward a debt of Ksh 83,029,357=. The Plaintiff however contents that it was fraudulently induced into entering into the said consent since the 1<sup>st</sup> Defendant did not disclose the fact that the 1<sup>st</sup> Defendant had sold its banking business and assigned its debt recovery rights to the 2<sup>nd</sup> Defendant and/or provide accurate statements during the negotiations.
18. The Plaintiff averred that the outstanding loan amount of Ksh 83,029,357= was overstated by over Ksh 40,000,000=, as the actual amount owed as of 28<sup>th</sup> October 2015 was Ksh 41,357,632/69, based on the 2<sup>nd</sup> Defendant’s bank statements. The 2<sup>nd</sup> Defendant in opposition to the instant application averred that as of November 2017, the Plaintiff owed the Defendants Ksh 124,443,484=, but the parties agreed to write off Ksh 41,414,127, leaving a balance of Ksh 83,029,357=, the amount reflected in the consent order dated 8<sup>th</sup> December 2017.
19. From the pleadings filed, it is manifest that the Plaintiff does not dispute being indebted to the Defendants, but it disputes the outstanding sum owed to the Defendants as captured in the consent judgment dated 8<sup>th</sup> December 2017. Annexed to the Plaintiff’s affidavit in support of the application herein is the Plaintiff’s statement of account for corporate current account No. 0030000136 held by the 2<sup>nd</sup> Defendant, which statement addresses the overdraft loan facility advanced to the Plaintiff by the 1<sup>st</sup> Defendant. On perusal of the said statement, this court notes that as of 6<sup>th</sup> October 2015, the Plaintiff’s outstanding debt to the Defendants was Ksh 41,357,632/69, but as at 1<sup>st</sup> December 2017, the debt was Ksh 64,229,702/98. This court notes that the sum of Ksh 64,229,702/98 is also captured



at paragraph 7 of the 2<sup>nd</sup> Defendant's replying affidavit and in the Plaintiff's statement of account for corporate current account No. 0030XXX136 annexed to the 2<sup>nd</sup> Defendant's replying affidavit. In the premise, I am not persuaded that the statements of account annexed to the 2<sup>nd</sup> Defendant's replying affidavit are meant to hoodwink this court.

20. It is noteworthy that the Plaintiff has neither addressed the term loan nor provided bank statements showing whether or not it had fully repaid it and if not, what was the outstanding balance if any. However, on perusal of the statement of account for the Plaintiff's term loan account No. 003TLKS14305XX27 annexed to the 2<sup>nd</sup> Defendant's replying affidavit, it is noteworthy that as at 9<sup>th</sup> November 2017 when the Plaintiff and the 1<sup>st</sup> Defendant got into a consent to settle this suit, the outstanding term loan amount was Ksh 61,119,267/33.
21. I opine that by filing a further affidavit in response to the 2<sup>nd</sup> Defendant's replying affidavit, the Plaintiff had an opportunity to either rebut and/or controvert the 2<sup>nd</sup> Defendant's averments with respect to the outstanding term loan due to the Defendants and the outstanding loan amount in general. It is however noteworthy that in the said further affidavit, the Plaintiff neither alleged nor demonstrated that there is no outstanding loan balance with respect to the term loan. In the premise, this court concludes that as at November 2017, when the parties herein entered into a consent compromising this suit, the Plaintiff's outstanding debt to the Defendants was Ksh 125,348,970/31.
22. Consequently, I am persuaded by the 2<sup>nd</sup> Defendant's contention that as of November 2017, the Plaintiff owed the Defendant Ksh 124,443,484=, but the parties agreed to write off Ksh 41,414,127=, leaving a balance of Ksh 83,029,357=, the amount reflected in the consent order dated 8<sup>th</sup> December 2017.
23. In the end, this court finds that the Plaintiff has not made out a case to warrant this court to exercise its discretion in its favour and issue an order reviewing, varying and/or setting aside the consent judgment dated 8<sup>th</sup> December 2017. As such, the consent judgment dated 8<sup>th</sup> December 2017 remains valid and binding between the parties herein.

Whether the 2<sup>nd</sup> Defendant Should be Compelled to Refund to the Plaintiff, the Ksh 23,191,434= Paid Under the Said Consent.

24. This relief is sought on grounds that the Ksh 23,191,434= was paid under a null and void consent order. However, this court has already found that the consent judgment dated 8<sup>th</sup> December 2017 is valid and binding between the parties herein.
25. Accordingly, I find that there is no justification to warrant this court to make an order compelling the 2<sup>nd</sup> Defendant to refund the Plaintiff Ksh 23,191,434= paid under the said consent.

Whether a Temporary Injunction Should Issue Against the 2<sup>nd</sup> Defendant, Restraining it From Selling or Interfering with L.R. No. 209/7XX4/7.

26. Temporary injunctions are provided for under Order 40 Rule 1 of the Civil Procedure. In the case of *American Cyanamid Co. v. Ethicon Ltd* [1975] AC 396; [1975] 1 All ER 504, the House of Lords reiterated the test for granting an interlocutory injunction, highlighting the following three key elements, namely:
  - a. That there must be a serious/fair issue to be tried;
  - b. That damages are not an adequate remedy, and



- c. That the balance of convenience lies in favour of granting or refusing the application.
27. The Court of Appeal in the case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR defined what constitutes a prima facie case as follows:
- “So what is a prima facie case” I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
28. From the consent judgment dated 8<sup>th</sup> December 2017, the Plaintiff was required to pay Ksh 400,000= per month toward a debt of Ksh 83,029,357=. The Plaintiff in the application herein has averred that since the consent judgment was entered, it has paid a total of Ksh 23,191,434= only, leaving a balance of Ksh 59,837,923= less interest. It is evident that the Plaintiff has neither alleged nor demonstrated payment of the aforesaid balance, meaning that it is still indebted to the Defendants. Further, the Plaintiff does not dispute having been issued with the requisite statutory notices prior to the Defendant’s exercising their statutory power of sale over all that parcel of land known as L.R. No. 2X9/7XX4/7.
29. In the circumstance, I am not persuaded that the Plaintiff has established a prima facie case with a probability of success.
30. Notably, it is now well settled that a property offered as security becomes a commodity for sale in the event of default. See the case of *Shimmers Plaza Limited v. National Bank of Kenya Limited* [2013] eKLR. Given the above, and considering the fact that the value of all that parcel of land known as L.R. No. 2X9/7XX4/7 can be readily determined through valuation, the Defendants, being financial institutions would be capable of compensating the Plaintiff if the suit is ultimately decided in the Plaintiff’s favour.
31. In the circumstance, I am persuaded that the Plaintiffs do not stand to suffer irreparable damage that cannot be adequately compensated by an award in damages in the event the instant application is disallowed. In the end, I am of the considered view that the balance of convenience tilts in favour of the Defendants.
32. The above notwithstanding, it is trite law that a temporary injunction can only be granted pending the hearing and determinations of a suit. In this case, such an order cannot issue considering the fact that the suit was already compromised vide a consent judgment dated 8<sup>th</sup> December 2017.

**Whether a Permanent Injunction Should Issue Against the 2<sup>nd</sup> Defendant.**

33. It is now trite law that a permanent injunction, also referred to as a perpetual injunction, is granted after a full hearing as it determines the parties’ rights, permanently restraining the commission of an act by the Defendant, in order for the rights of the Plaintiff to be protected. A permanent injunction is based on the case’s merits and differs from a temporary injunction, which only lasts for a limited period or until the issuance of further court orders during the pendency of a suit.



34. However, as already found above herein, this suit was compromised and/or determined vide a consent judgment dated 8<sup>th</sup> December 2017. This means that the rights of the parties herein have already been fully determined in finality. Furthermore, having found that the Plaintiff is still indebted to the Defendants, an order of permanent and/or perpetual injunction cannot issue against the Defendants with respect to all that parcel of land known as L.R. No. 2X9/7XX4/7.

**Whether the 2<sup>nd</sup> Defendant Should be Compelled to Execute a Discharge for LR No. 2X9/7XX4/7 and Hand Over the Title Documents to the Plaintiff.**

35. I am of the considered view that the Plaintiff being indebted to the Defendants in the sum of Ksh 59,837,923= less interest, the 2<sup>nd</sup> Defendant cannot be compelled to execute a discharge of charge for all that parcel of land known as L.R. No. 2X9/7XX4/7 and hand over the title documents to the Plaintiff. This is especially so, since the said property is held as security by the 2<sup>nd</sup> Defendant with respect to the said debt. Further, the consent judgment dated 8<sup>th</sup> December 2017 allows the Defendants to proceed with the sale of the security property, being all that parcel of land known as L.R. No. 2X9/7XX4/7, without the need for further notices and/or execution for recovery of any balance owing.
36. In the circumstance, I am not persuaded to issue an order compelling the 2<sup>nd</sup> Defendant to execute a discharge of charge for all that parcel of land known as L.R. No. 2X9/7XX4/7 and hand over the title documents to the Plaintiff.

Whether a mandatory injunction requiring the immediate release of the title documents and duly executed discharge should issue.

37. It is now well established that interlocutory mandatory injunctions are granted only in exceptional circumstances and with great caution. This was the position by the Court of Appeal in the case of Joseph Kaloki t/a Royal Family Assembly v. Nancy Atieno Ouma [2020] eKLR as follows:

“As this Court stated in Kenya Breweries Limited & Another v. Washington O. Okeyo [2002] eKLR a mandatory injunction can be granted on an interlocutory applications as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”

38. Having found that the Plaintiff has not made out a case to warrant the setting aside of the consent judgment dated 8<sup>th</sup> December 2017, the Plaintiff has not established a prima facie case with a probability of success, and that the Plaintiff is indebted to the Defendants in the sum of Ksh 59,837,923= less interest, I am not persuaded that there exists special circumstances to warrant grant of an order of mandatory injunction at this juncture.
39. In the end, this Court finds that the Plaintiff's application dated March 18, 2024 is not merited. As a result, the application herein is hereby dismissed with costs to the 2<sup>nd</sup> Defendant.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF MAY 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

