



**Wab Hotels Limited (In Receivership) & another v IDB Capital Limited & 3 others (Civil Suit 734 of 2002) [2025] KEHC 6185 (KLR) (Commercial and Tax) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6185 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 734 OF 2002**

**A MABEYA, J**

**MAY 16, 2025**

**BETWEEN**

**WAB HOTELS LIMITED (IN RECEIVERSHIP) ..... 1<sup>ST</sup> PLAINTIFF**

**JOSEPH WAMBUA MULUSYA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**IDB CAPITAL LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**LAWRENCE ODORI NABWANA ..... 2<sup>ND</sup> DEFENDANT**

**PONANGIPALILI VENKATA RAMANA RAO ..... 3<sup>RD</sup> DEFENDANT**

**KOLLURI V SUBBRAYA KAMASASTRY ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. On 10/1/2023, the Court entered partial judgment in favour of the plaintiff against the defendants, jointly and severally, directing the defendants to produce a full account of all the dealings with the plaintiff and its businesses from the date of appointment of the receivers to the date of sale the 1<sup>st</sup> plaintiff's property.
2. Further, the 1<sup>st</sup> defendant was directed to file an affidavit within 30 days detailing an account of the sums lent to the plaintiff, sums outstanding at the date of appointment of the receivers and at the date of selling the 1<sup>st</sup> plaintiff's property. The 1<sup>st</sup> defendant was also directed to provide full and current bank account statements of the 1<sup>st</sup> plaintiff's loan account.
3. The defendants filed an affidavit of accounts dated 6/3/2023 sworn by Ponangipalli Ramana Rao. He stated that the 1<sup>st</sup> plaintiff's hotel was placed under receivership due to loan default. On 6/4/2004,



the 3<sup>rd</sup> and 4<sup>th</sup> defendant were appointed as joint Receiver-Managers under the IDB Debenture dated 29/12/1998, replacing the 2<sup>nd</sup> defendant (now deceased).

4. It was deposed that the 1<sup>st</sup> plaintiff had received a Kshs. 25 million loan in 1998 for hotel refurbishment but defaulted, accumulating a debt of Kshs. 38.2 million by June 2002. The plaintiff's obtained a temporary suspension of receivership in July 2002 but failed to secure financing, leading the Court to reinstate the receiver in February 2003. Despite multiple opportunities, the plaintiffs refused to hand over financial records or a Statement of Affairs, forcing the receivers to reconstruct accounts independently.
5. That the plaintiffs had themselves admitted in writing that the hotel was debt-ridden, with financial statements showing net losses before receivership. In 2003, the plaintiffs applied for the hotel to be sold. The defendants further stated that in 2007, IDB agreed to settle the debt for Kshs. 40 million, but the plaintiffs and their financiers failed to honor the agreement. The receivers complied with court orders regarding the sale of the hotel in 2008 and filed statutory financial records during the receivership, although tax filings were hampered by the plaintiffs' refusal to provide past financial records.
6. The hotel was valued at Kshs. 70 million in 2006, with a reserve price of Kshs. 50 million, though this valuation mistakenly included an adjacent plot. The sale was completed on 24/10/2008, and receivership ceased in 2012. The defendants observed that previously, Courts had dismissed the plaintiffs' claims of fraudulent sale, undervaluation and mismanagement.
7. Additionally, the issue of disputed assets, including a hydraulic lift and generator, was resolved in a 2023 ELC judgment. The defendants emphasized that under the Debenture Covenant, the receivers acted as agents of the 1<sup>st</sup> plaintiffs and the plaintiffs never made any loan repayments since 2002.
8. Finally, they denied involvement in 2006 negotiations between K-Rep Bank and Eagle Supermarkets Ltd regarding hotel tenancy, reaffirming that the receivership and subsequent sale of the hotel were conducted lawfully and in compliance with all legal and financial obligations.
9. The defendants filed a second affidavit sworn on 13/3/2023 by Erastus Njoroge wherein the defendants produced the documents with respect to the sums lent to the plaintiff, the sums outstanding at the date of receivership, the sums outstanding at the date of sale of the hotel and assets.
10. All monies received and monies paid out by receivers and the full and current bank account statements of the WAB Hotel loan account from the date of disbursement to date of sale of security properties.
11. DW3, P.V.R Rao, adopted the contents of the affidavit dated 13/03/2023, the supplementary bundle dated 10/05/2023, and produced the additional bundle dated 26/09/2023 as exhibits. He stated that he did not produce any false returns and clarified that the hotel, including its furniture and fittings, was sold. The value of the furniture and fittings was Kshs 2,332,330, while the total lump sum sale figure was Kshs 46 million, which was guided by the forced sale value. He also stated that the beer garden, which was included in the valuation report, was not charged to the bank.
12. Rao further explained that when he took over the receivership, the hotel had made a loss of Kshs 1,626,735 in 2001 and Kshs 9,424,782 in 2002. At the time the property was sold, the payable amount was Kshs 46 million.
13. In cross-examination, he stated that he did not know the loan balance at the time he took over. He confirmed that the sale could not proceed below the reserve price, which was Kshs 50 million, but nevertheless sold the properties for Kshs 46.5 million. He also clarified that the bank was responsible for the valuation of the property and he was only in charge of the movable assets.



14. DW1, Erastus Njoroge, adopted the affidavit sworn on 13/03/2023 as his evidence. He stated that the loan borrowed was Kshs 25 million and the amount disbursed was Kshs 24,966,390 in seven tranches. He explained that Kshs 15 million of this amount was allocated to HFCK for the bridging finance agreement. By the time of receivership, the loan had accumulated to Kshs 38,244,372.65 as at June 2002. At the time the properties were sold, the loan balance was Kshs 46,395,496.70 and after the sale, the 1<sup>st</sup> defendant received the proceeds.
15. In cross-examination, he stated that the hotel was sold below the reserve price. He confirmed that the valuation included property that was not part of the security. He also noted that there was no audit conducted after the receivership and the valuation report was three years old. He further testified that the hotel had been a loss-making venture. He clarified that the excluded property was not sold and that the bank did not carry out a forensic audit to confirm the receivers' report.
16. Both parties filed their respective submissions which the Court has considered. The plaintiffs submitted for billions while the defendants submitted that no damages were awardable. At this stage, the Court is tasked with assessing the damages payable to the defendants.
17. The in its earlier judgment, the Court directed the 1<sup>st</sup> defendant to provide a detailed account of the sums lent to the 1<sup>st</sup> plaintiff as well as the outstanding amount at the time of the appointment of the receiver and at the time of the sale of the property. This order was issued to ensure transparency and accountability in the dealings between the parties, especially in light of the serious claims made by the plaintiffs regarding the financial transactions and the receivership process.
18. In compliance with this order, the 1<sup>st</sup> defendant produced two documents: the offer letter dated 9/9/1997 and a letter dated 14/9/1998. These documents, however, failed to provide sufficient clarity on the specific terms of the loan, the amounts disbursed and the subsequent financial dealings.
19. To further substantiate its position, the 1<sup>st</sup> defendant also presented loan statements, which are found on pages 7 to 9 of the 1<sup>st</sup> defendant's exhibit. Unfortunately, these statements are illegible, rendering them incapable of fulfilling the court's directive to produce a clear and detailed account. As a result, the contents of these documents cannot be relied on to substantiate the 1<sup>st</sup> defendant's case, as they fail to meet the required standard of clarity and accuracy.
20. In this regard, this illegibility of the loan statements undermines their probative value as they cannot be properly examined or used to assess the accuracy of the 1<sup>st</sup> defendant's disbursements or the outstanding loan amounts.
21. As observed in the partial judgment, the plaintiffs had raised significant concerns regarding the accuracy and validity of the defendants' disbursements. Specifically, the plaintiffs challenged certain aspects of the loan disbursements and as a result, the 1<sup>st</sup> defendant was afforded an opportunity to produce clear and convincing evidence to support its claims but it failed. All that can be relied on is the testimony of DW1, Erastus Njoroge that the approved loan was Kshs.25m of which only Kshs.24.3 m was disbursed. That as at the time of sale of the properties, the amount outstanding was Kshs.46.3m.
22. As to whether the plaintiffs are entitled to the orders sought in damages, the plaintiffs submitted that they needed a refund of the full book value of the fixed assets on LR. No Nairobi Block 75/1031, following the fraudulent sale and transfer of land, buildings, furniture, and machinery, valued at Kshs. 277,519,683/- as of 31/10/2009.
23. It is not in dispute that the 1<sup>st</sup> plaintiff defaulted on a loan facility advanced by the 1<sup>st</sup> defendant, which resulted in the appointment of a receiver pursuant to the debenture executed between the parties. The



appointed receiver subsequently sold the charged property for a sum of Kshs. 46.5m. DW2 admitted that the property was sold below the reserve price of Kshs.50 million.

24. It would seem that all that the defendants were interested in was to recover the alleged outstanding amount. That won't do, a Chargee owes a duty of care to the Chargor in the exercise of its statutory power of sale. That is why the law requires that a valuation not older than 12 months be conducted before the sale of a charged property.
25. Despite this admission, the defendants did not produce sufficient evidence to support the valuation of the property at the time of sale having in mind that the valuation report relied on was over three (3) years old. The defendants did not demonstrate the existence of any exceptional circumstances that would have justified the selling below the reserve price. In the absence of such justification, the Court finds that the defendants failed to discharge their burden of proving that the sale was conducted in accordance with the law.
26. The defendants contended that its valuation was inclusive of property not charged by the 1<sup>st</sup> defendant. Why such an anomaly, it was not explained. The value of the allegedly wrongly included property was not given.
27. In this regard, the valuation produced by the plaintiffs becomes more persuasive in the circumstances. From the record, the plaintiffs conducted three valuations to which the value of the property was more than Kshs.100m. The Court is therefore satisfied that there was undervaluation of the plaintiff's property by Kshs 231,519,683 as pleaded.
28. On the claim for lost earnings, including loss of rental income, directors' personal earnings, professional fees and remuneration, the Court finds no legal basis for granting the reliefs sought. It is evident from the record that the receivership was lawfully instituted in accordance with the debenture agreement executed between the parties. The appointment of the receiver was a contractual remedy available to the 1<sup>st</sup> defendant upon default by the 1<sup>st</sup> plaintiff.
29. Once the receivership was triggered, the control and management of the charged assets vested in the receiver for the purpose of securing and recovering the debt owed to the lender. At that point, the directors of the 1<sup>st</sup> plaintiff ceased to exercise authority over the business operations and could not therefore, legitimately claim loss of personal income or remuneration attributable to the receivership.
30. With respect to the claim for recovery of an un surveyed parking plot measuring approximately 0.1200 hectares this claim is also dismissed. The matter was conclusively addressed in the judgment of the Environment and Land Court (ELC) delivered on 2/2/2023, wherein it was held that the said property did not belong to the 1<sup>st</sup> plaintiff.
31. As regards the generator, the same issue was also addressed by the Environment and Land Court, which granted the plaintiff permission to recover it from the premises. There was no evidence as to what happened to that generator. However, since the plaintiffs are to recover the full value of the property sold less what was owed and of which the defendants sold the properties for, the Court will not add the lease charges for the generator as urged by the plaintiffs.
32. Accordingly, judgment is hereby entered in favour of the plaintiffs against the 1<sup>st</sup> defendant as follows: -
  - a. Kshs. 231,019,683/- being the difference between the full book value of the fixed assets on LR. No. Nairobi Block 75/1031 (Kshs. 277,519,683) and the sale price (Kshs. 46.5 million), arising from the unlawful undervaluation and sale of the charged property and the amount allegedly outstanding at the time of sale.



- b. Interest thereon at court rate from the date of this judgment until payment in full.
- c. Costs of the suit are awarded to the plaintiffs.

It is so decreed.

**DATED AND DELIVERED AT VIRTUALLY THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**A. MABEYA, FCI arb**

**JUDGE**

