



**Trans-Century PLC v Equity Bank (Kenya) Limited & 2 others (Civil Suit E276 of 2023)  
[2023] KEHC 19127 (KLR) (Commercial & Admiralty) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19127 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
CIVIL SUIT E276 OF 2023**

**A MABEYA, J**

**JUNE 26, 2023**

**BETWEEN**

**TRANS-CENTURY PLC ..... PLAINTIFF**

**AND**

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

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

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

**RULING**

1. On the June 16, 2023, the 1<sup>st</sup> defendant placed the plaintiff under receivership in exercise of its powers under a floating debenture. It therefore appointed the 2<sup>nd</sup> and 3<sup>rd</sup> defendant as the administrators.
2. However, by a Motion on Notice dated June 18, 2023, the plaintiff challenged the said receivership and sought various injunctive orders against the defendants. By an order made on June 19, 2023, injunctive orders were issued against the defendants thereby effectively suspending the receivership.
3. On June 20, 2023, the 1<sup>st</sup> defendant moved swiftly and challenged the said ex parte orders vide a Motion of even date. It is that Motion that came before me this morning for directions and having given directions, Mr Kiragu Kimani (SC) urged the Court to grant prayer No 4 in the interim. Mr Nyachoti Learned Counsel for the plaintiff vehemently opposed the application for reasons on record. Mr Ogunde for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant was in support of the orders sought.
4. That prayer was as follows:-
  - a. This application be certified urgent and service thereof be dispensed with in the first instances.



- b. Pending the hearing and final determination of this Application, this Honorable Court be pleased to vary the ex parte orders granted on June 19, 2023 by making a further order restraining the directors, agents, employees or servants of the plaintiff from disposing of any asset of the plaintiff, including paying out any money held in its accounts, except for critical payments to preserve assets and any business of the plaintiff that is in the interest of all its stakeholders and only with the written approval of the 2<sup>nd</sup> and 3<sup>rd</sup> defendant.
  - c. Upon hearing of the instant application and the plaintiffs' application dated June 18, 2023, the court do discharge the orders that were made on herein ex parte on the June 19, 2023.
  - d. Costs of the application be provided for.
5. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants also opposed the application by the plaintiff vide a Motion on Notice dated June 19, 2023. They also sought an order to restrain the directors of the plaintiff from disposing the assets of the plaintiff and from paying out monies held in accounts except for critical payments to preserve the assets of the plaintiff and its business.
  6. I have considered representations by Learned Counsels. I have also carefully considered the record. There is no dispute that the plaintiff obtained facilities from the 1<sup>st</sup> defendant in respect of which securities were provided. These include debentures executed in 2013 and 2014, respectively. Those debentures are being challenged for reasons contained in the affidavit in support of the application by the plaintiff.
  7. I have considered the effect of the order of June 19, 2023 which suspended the receivership of the plaintiff. I have considered also the prayer for setting aside those orders. The apprehension on the part of the defendants is that if prayer No 4 is not granted, the directors and shareholders of the plaintiff may strip it of its assets to the extreme detriment of the defendants.
  8. I appreciate Mr Nyachoti's submissions that all the fixed assets of the plaintiff are charged to the 1<sup>st</sup> defendant and they cannot be dealt with without recourse to the 1<sup>st</sup> defendant. However, the Court is alive to the fact that there are other assets, such as money, which is fluid in nature and can disappear with a stroke of a pen. Indeed, Mr Kiragu Kimani (SC) alluded to the fact that the account sought to be preserved holds funds which are of interest to the 1<sup>st</sup> defendant.
  9. I note from the correspondence made to Court that the plaintiff was servicing the facilities, albeit very dismally as late as mid this month.
  10. My view of the matter is that, any order to be made must take cognizance of the fact that the opposing rights of the respective parties have not been established. That whatever order to be made must in the end preserve the plaintiff and its assets upto the logical conclusion of the dispute so that the principal objective of receivership is realized.
  11. In this regard, I am inclined to allow prayer no. 4 of the application as sought with a rider that the plaintiff will be permitted to operate other accounts other than account No 011500988xxx at Co-operative Bank purely for purposes of running the operations of the plaintiff as a going concern and not otherwise.
  12. The foregoing order will permit the plaintiff to continue undertaking the major contracts that it has with 3<sup>rd</sup> parties provided that any funds received shall be applied towards settling statutory liabilities, undertaking the normal operations of the plaintiff and settling liabilities owed to the 1<sup>st</sup> defendant.
  13. I have agonized over the request by the 2<sup>nd</sup> and 3<sup>rd</sup> defendant that the plaintiff do operate and/or make payments with their consent. That might hamstring the plaintiff from making otherwise well intended



decisions which may be otherwise for the benefit of the 1<sup>st</sup> defendant. The principal intention should be to settle the huge debt owed to the 1<sup>st</sup> defendant. Having 2 centers of power may not augur well with the plaintiff. Accordingly, I decline the request.

14. As a show of good faith and since the plaintiff is enjoying the orders of this Court, I direct that in its operations, it shall keep the 1<sup>st</sup> defendant notified of any major undertakings through its advocate on record to obviate the likelihood of erosion of the plaintiff's assets and the plaintiff as a going concern.
15. Accordingly, I make the following orders:
  - a. Pending the hearing and determination of application dated June 18, 2023, the directors of the plaintiff are hereby restrained from transferring and/or interfering and/or otherwise dealing in any manner howsoever with the funds raised through the plaintiff's rights issue and held in account no 011-500-988-xxx at the Co-operative Bank of Kenya ltd.
  - b. The plaintiff's directors are also restrained from dealing and/or transferring monies held in other accounts belonging to the plaintiff in a manner that will be prejudicial to the plaintiff and the 1<sup>st</sup> defendant as debenture holder except for the purposes of the plaintiff's necessary operations and settlement of recurrent expenses.
  - c. The plaintiff to keep the 1<sup>st</sup> defendant notified of any major undertaking through its advocates on record and the Court.
  - d. Mention on July 4, 2023 for further directions as earlier on directed.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

