Mg Holdings Limited & 3 others v cba Bank Kenya Plc (Previously Nic Bank Kenya Plc) & another (Commercial Case E601 of 2025) [2025] KEHC 15567 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15567 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE E601 OF 2025

PM MULWA, J

OCTOBER 30, 2025

BETWEEN

MG HOLDINGS LIMITED ..... 1ST PLAINTIFF

RAJINDER SINGH BARYAN ..... 2ND PLAINTIFF

TORCHAN SING HEER ..... 3RD PLAINTIFF

MANVIR SINGH BARYAN ..... 4TH PLAINTIFF

AND

CBA BANK KENYA PLC (PREVIOUSLY NIC BANK KENYA PLC) ..... 1ST DEFENDANT

BARAK FUND SPC LIMITED ..... 2ND DEFENDANT

RULING

1. The Plaintiffs filed a Chamber Summons application dated 22nd September 2025, brought under Section 7 of the *Arbitration Act*, Rule 17 of the High Court (Organization and Administration) Rules, 2016, and Order 5 Rule 22 of the Civil Procedure Rules, 2010.

2. The application in a nutshell seeks the following substantive orders:

    i. A temporary injunction restraining the Defendants, their servants, employees, representatives and/or agents from applying to liquidate Multiple Hauliers (EA) Limited or from appointing an administrator or official receiver pending the conclusion of the arbitral proceedings before the London Court of International Arbitration (LCIA).

ii. A temporary injunction restraining the Defendants from calling upon the Plaintiffs, as guarantors, to settle the debt pending conclusion of the said arbitral proceedings.

3. The application is supported by the affidavit of Rajinder Singh Baryan, a director of Multiple Hauliers (EA) Limited, who avers that the borrower company is a logistics and freight forwarding firm employing thousands of Kenyans.

4. It is his case that the 1st Defendant, together with other lenders, entered into a Senior Facilities Agreement (SFA), a Mezzanine Facilities Agreement (MFA), an Intercreditor Agreement (ICA), all dated 2nd October 2017, and a Side Letter, dated 22nd December 2017, under which an aggregate amount of USD 134,500,000 was to be disbursed by 15th March 2018 for debt repayment and working capital.

5. The Plaintiffs further aver that despite the surrender of 21 title deeds as security and the execution of personal guarantees, the Defendants failed to disburse the entire facility, thereby pushing the borrower into financial distress and eventual insolvency. The Official Receiver (OR) was thereafter appointed as a neutral administrator by the Court.

6. The Defendants have, however, allegedly continued to harass the borrower and the guarantors, and now threaten to replace the Official Receiver with a hostile administrator, an act the Plaintiffs contend would prejudice the ongoing LCIA Arbitration No. 246187 — Multiple Hauliers (EA) Ltd & Others v Standard Bank of South Africa & Others.

7. The Plaintiffs therefore seek interim protection under Section 7 of the *Arbitration Act* pending the outcome of the arbitral proceedings.

8. The 1st Defendant opposes the application through the Replying Affidavit of Stephen Atenya, sworn on 6th October 2025 and grounds of opposition dated 1st October 2025. It contends that the borrower has been indebted to the 1st Defendant since 2002 and currently owes Kshs. 12,739,473,358.07.

9. The 1st Defendant argues that the SFA was intended to rescue the borrower from insolvency through restructuring. It submits that the Plaintiffs' application seeks to restrain the Defendant from exercising its contractual and statutory rights to enforce securities and to appoint administrators under Section 608 of the *Insolvency Act*, 2015.

10. It is further contended that the application is an abuse of court process, as a similar matter is pending before Justice Gikonyo, and that the application is defeated by laches, having been filed four years after the appointment of joint administrators. The Defendant also asserts that some Plaintiffs are not parties to the arbitration agreement and cannot therefore invoke Section 7 of the *Arbitration Act*.

Analysis and determination

11. Having considered the pleadings, affidavits, submissions, and authorities cited, the following issues arise for determination:

    i. Whether the Plaintiffs have established a proper basis for this Court to grant interim measures of protection under Section 7 of the *Arbitration Act*;

    ii. Whether the orders sought meet the threshold for a temporary injunction.

12. The Applicants contend that without interim protection (prohibiting liquidation, replacement of the OR with a hostile administrator, and demands on guarantors) the arbitration process will be rendered nugatory and the company's existence as a going concern will be destroyed.

13. Section 7(1) of the *Arbitration Act*, empowers the High Court to grant interim measures of protection. It reads thus:

> "It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure."

14. The Court of Appeal in Safaricom Limited v Ocean View Beach Hotel Limited & 2 others [2010] eKLR elaborated that interim measures under Section 7 are intended to preserve the subject matter of the arbitration, maintain the status quo, and ensure the arbitral proceedings are not rendered futile. The Court emphasized that such measures "are intended in principle to operate as holding orders pending the outcome of the arbitral proceedings" and that courts must be "reluctant to make a decision that would risk prejudicing the outcome of the arbitration."

15. From the foregoing, the principles governing the grant of interim measures of protection are now settled:

    i. The existence of an arbitration agreement.

    ii. Whether the subject matter of arbitration is under threat.

    iii. In the special circumstances, which is the appropriate measure of protection after an assessment of the merits of the application?

    iv. For what period must the measure be given especially if requested for before the commencement of the arbitration so as to avoid encroaching on the tribunal's decision-making power as intended by the parties?

16. It is not disputed that there exists an arbitration agreement under Clause 44 of the SFA referring disputes to the LCIA. There is also evidence of a pending arbitration being LCIA Case No. 246187. Accordingly, the first limb is satisfied.

17. On whether the subject matter is under threat, the Plaintiffs aver that the Defendants' actions, including efforts to replace the Official Receiver with a hostile administrator and to demand payment from guarantors, threaten to defeat the arbitration process and destroy the company as a going concern. The Court is persuaded that liquidation or replacement of the OR before conclusion of arbitration would alter the status quo and prejudice the arbitral proceedings.

18. The 1st Defendant's contention that it is merely exercising its statutory power under the *Insolvency Act*, 2015, does not diminish the necessity for preservation of the status quo. The jurisdiction of this Court under Section 7 of the *Arbitration Act* is precisely intended to maintain equilibrium between the parties pending arbitral resolution.

19. The Court's role is not to restrain the exercise of lawful contractual or statutory rights in perpetuity, but to ensure that such actions do not defeat the arbitral process or render its outcome nugatory. The 1st Defendant has further contended that the Plaintiffs are not parties to the agreements in dispute and therefore lack locus standi to invoke Section 7 of the *Arbitration Act*.

20. Upon careful perusal of the contractual documents annexed to the supporting affidavit, including the Senior Facilities Agreement (SFA), Mezzanine Facilities Agreement (MFA), Intercreditor Agreement (ICA), and the Side Letter all dated 2nd October 2017, this Court is satisfied that the Plaintiffs were indeed parties to the said agreements. The 2nd and 3rd Plaintiffs executed the instruments on behalf of the borrower, Multiple Hauliers (EA) Limited, while the 1st Plaintiff, MG Holdings Limited,

executed in its capacity as the parent company and shareholder of the borrower. The agreements were expressly made between MG Holdings Limited, the shareholders of Multiple Hauliers (EA) Limited, Stanbic Bank Kenya Limited, Standard Bank of South Africa Limited, and other participating financial institutions.

21. Accordingly, the Plaintiffs cannot be regarded as strangers to the arbitration clause contained therein. The arbitration agreement was broadly drafted to include the parties, their guarantors, affiliates, and successors in title, thereby entitling the Plaintiffs to invoke the jurisdiction of this Court under Section 7 of the *Arbitration Act* for interim relief.

22. Having established that there exists a valid arbitration agreement to which the Plaintiffs are privy, and that the subject matter of the arbitration is under imminent threat, this Court is persuaded that the application falls within the ambit of Section 7. The guiding principle remains that the Court's intervention should be supportive of, rather than obstructive to, the arbitral process.

23. Interim measures of protection are often tailored to support the arbitral process and to ensure the process is not undertaken in vain. Secondly, courts have coercive powers not just over the parties to the arbitral agreement but also third parties, against whom an arbitral tribunal may have no jurisdiction. Often, interim measures of protection are coercive and rely upon third parties as in this case where the guarantor banks are to be deemed third parties to the arbitration agreement. The Applicant avers that, there is in existence an Agreement.

24. In Safaricom Limited v Ocean View Beach Hotel Limited & 2 others (supra), the Court of Appeal held that:

> " In the matter before us, the court went on to make orders which undermined the arbitration and the outcome of the arbitration contrary to Section 17 of the *Arbitration Act*. A court of law when asked to issue interim measures of protection must always be reluctant to make a decision that would risk prejudicing the outcome of the arbitration.

25. Flowing from the above principles and authorities, the Court must therefore exercise its discretion judiciously, bearing in mind that interim measures are not intended to determine the rights of the parties with finality but only to safeguard the substratum of the dispute pending arbitration. Interlocutory or interim reliefs are granted not to confer advantage on either party but to maintain the status quo and ensure that justice is not defeated by the passage of time.

26. In the present case, the Plaintiffs have demonstrated, on a prima facie basis, that unless the Defendants are restrained, the very subject matter of the arbitration, the continued management and operations of the company, will be jeopardized. The intended replacement of the Official Receiver, initiation of liquidation proceedings, and enforcement of guarantees are actions capable of altering the company's structure and ownership in a manner that would render the arbitral reference nugatory.

27. The Court is alive to the principle that where a party has invoked arbitration, the court should support and not usurp the arbitral process.

28. The 1st Defendant has argued that its actions are sanctioned by law, particularly under the *Insolvency Act*, and that this Court should not interfere with statutory powers duly exercised. While the Court recognizes that statutory powers must not be lightly restrained, the intervention under Section 7 is exceptional and is only warranted where such actions, if undertaken, would render the arbitral process illusory or nugatory. The preservation sought in this case is temporary and does not permanently curtail the Defendant's statutory entitlements.

Whether the orders sought meet the threshold for a temporary injunction

29. In applying the test for the grant of temporary injunctive relief as set out in Giella v Cassman Brown & Co. Ltd [1973] EA 358, the Court must consider, whether the applicant has established a prima facie case with a probability of success, whether the applicant stands to suffer irreparable harm that cannot be adequately compensated by damages; and if the court is in doubt, to decide the matter on a balance of convenience.

30. On the first limb, the Plaintiffs have shown a plausible case anchored on the arbitration clause and the pending reference before the LCIA. The actions of the Defendants, if not restrained, are capable of undermining the arbitral tribunal's authority and prejudicing the outcome of the proceedings.

31. On irreparable harm, liquidation or alteration of the company's management would have irreversible consequences. The destruction of the company's going-concern value and the exposure of guarantors to enforcement actions cannot easily be remedied by damages. As such, irreparable prejudice is evident.

32. Finally, on the balance of convenience, it tilts in favour of maintaining the status quo. Preserving the current state of affairs will not prejudice the Defendants beyond delay, whereas permitting the contested actions could fundamentally alter the substratum of the dispute and render the arbitration an academic exercise.

33. In light of the foregoing, the Court finds that the Plaintiffs have met the threshold for the grant of interim measures of protection. The orders sought are therefore merited, limited strictly to preserving the subject matter pending the conclusion of the arbitral process.

34. Accordingly, and for the reasons set out above, this Court finds merit in the Plaintiffs' Chamber Summons application dated 22nd September 2025.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF OCTOBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Owiti & Ms. Masaki for Plaintiffs

Ms. Arora for 1st Defendant

Court Assistant: Carlos