

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**COMM. CASE NO. E757 OF 2025**

**BETWEEN**

**MOTORHUB LIMITED (Under Administration).....**  
**.....PLAINTIFF**

**AND**

**KCB BANK KENYA LIMITED.....1<sup>ST</sup>**  
**DEFENDANT**

**KERETO MARIMA.....2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

**Introduction and Background**

1. The Plaintiff (“the Company”) filed this suit together with a Notice of Motion application dated 11<sup>th</sup> November 2025 seeking to terminate and/or revoke in *toto* the appointment of the 2<sup>nd</sup> Defendant (“the Administrator”) dated 28<sup>th</sup> October 2025 and that there be a stay of all enforcement proceedings, including the intended sale of LR No. 122/43 (ORG NO. 122/9/33) and LR No, 122/111 (“the suit

properties”) or any other property of the Company, by the 1<sup>st</sup> Defendant (“the Bank”) or its agents.

2. The application is supported by the grounds on its face and the affidavit of the Company’s director, EDWARD KARAU GACHANI sworn on 11<sup>th</sup> November 2025 and it is opposed by the Bank through the replying affidavit of its Head of Special Assets and Corporate Recoveries, OSCAR OBUNA sworn on 2<sup>nd</sup> December 2025 and by the Administrator through his replying affidavit sworn on 1<sup>st</sup> December 2025.
3. On 17<sup>th</sup> November 2025, the court granted interim orders staying the Administrator's appointment, an injunction restraining the Administrator from dealing with the Company’s business and restraining the Bank from advertising or selling the suit properties and a stay of all enforcement proceedings against the Company. This prompted the Bank to file the application dated 20<sup>th</sup> November 2025 seeking to set aside and discharge those orders.
4. The applications have been canvassed by way of written submissions which together with the pleadings I have considered and I will be making relevant references to the same in my analysis and determination below.

## **Analysis and Determination**

5. I propose to first deal with Company's application as it will determine whether or not the interim orders should be discharged and consequently dispose of the Bank's application. The Company argues that being put under administration has caused severe reputational damage and this has led to negative publicity, social media backlash, customers demanding refunds, and risks causing the collapse of a critical new dealership and service center contract with an international partner, **Salvador Caetano Kenya Limited (SCK)** and that this contract is presented as a financial lifeline.
6. The Company disputes the amount claimed by the Bank stating that the total loan taken in February 2025 was Kshs.350,000,000.00/= but the Bank is now demanding Kshs.381,034,107.65/=, including Kshs.77,262,395.65/= in arrears. The Company contends the rapid increase is due to punitive and excessive interest rates making the debt disputed. It states that appointing an administrator over a disputed debt is a gross abuse of court process intended to exert undue pressure and it claims the Bank, as a secured creditor with charges over properties valued at Kshs.500,000,000.00/= should have used its statutory power of sale instead of the drastic and draconian measure of administration.

7. The Company asserts it has a viable business, is a market leader, and has significant trade receivables of about Kshs.100,000,000.00/= and it claims to be acting in good faith by instructing property agents to sell the suit properties at market value to settle the debt and has already received an Expression of Interest from a potential buyer who is a Member of Parliament. It states that other lenders have agreed to a short-term standstill to allow for operational restructuring with experts like *PricewaterhouseCoopers* and the Company explains that its business involves long lead times of over 6 months to import vehicle consignments and since the loan is less than 6 months old, it argues it is impossible to have seen a return on investment yet. It states that it has a consignment arriving in December 2025, the proceeds of which would be directed to loan repayment and warns that continued administration will irreparably damage operations, leading to collapse, which would be detrimental to all creditors, including the Bank and that over 200 employees risk losing their livelihoods.
8. In response, the Bank depones that it advanced Kshs.350,000,000.00/= to the Company in January 2025, secured by multiple securities including board resolutions, personal guarantees, legal charges over the suit properties and a debenture

over all assets, and chattels. It claims that the Company consistently defaulted on repayments and that despite two restructurings in February and May 2025 agreed to by the Bank, the Company failed to regularize its account. That as of 19<sup>th</sup> November 2025, significant arrears remained as the Term Loan had arrears of Kshs.328,813,473.75/=, the Short-Term Loan balance stood at Kshs. 15,827,793.00 and the overdraft had a balance of Kshs.51,762,077.50/=

9. The Bank states that following the defaults, it issued a statutory 90-day demand notice on 27<sup>th</sup> August 2025, obtained recent property valuations as required by law and lawfully appointed the Administrator on 28<sup>th</sup> October 2025 under the powers in the Debenture and the ***Insolvency Act***. The Bank dismisses the Company's arguments and claims of disputed arrears and viable restructuring alternatives stating that the same are unsubstantiated. That the alleged trade receivables or deals with other entities do not extinguish the secured debt and that an alleged short-term standstill agreement with other lenders is not binding on the Bank.

10. The Bank accuses the Company of forum shopping and concealing material facts. It details that the Company filed identical applications in another related insolvency cause being **HCCOMMIP**

**No. E067 of 2025** on 5<sup>th</sup> and 11<sup>th</sup> November 2025, which were either withdrawn or denied *ex parte* relief. That the present application is stated to be a deceitful attempt to re-litigate the same issues and delay enforcement and the Bank argues that granting the Company's orders would prejudice its secured position, undermine the administration process designed to benefit all creditors, and allow the Company to use court process to avoid contractual obligations. It asserts the Court cannot rewrite contracts and prays for the application to be dismissed forthwith with costs awarded to the Defendants in the interests of justice, judicial consistency, and public confidence.

11. On his part, the Administrator states that his appointment was lawful, proper, and in full compliance with the ***Insolvency Act*** and the Debenture. He contends that the company's application to remove him is frivolous, incompetent, and an abuse of court process, and should be dismissed. He depones that the Company defaulted on the loan and that Clause 20 of the Debenture expressly allowed the Bank to appoint an Administrator upon default and the Bank exercised this right under **section 534** of the ***Insolvency Act*** and formally appointed him. The Administrator states that he is a licensed Insolvency Practitioner, all statutory steps were followed including filing *Form 35* with the court,

notifying the Registrar of Companies and the Official Receiver, publishing notices in the *Daily Nation* and the *Kenya Gazette* and he provided his written consent to act as Administrator. He avers that preliminary assessments show the Company is insolvent and in dire financial distress as the business premises are leased, and rent is in arrears, of the 33 vehicles on site, only 3 belong to the Company; the rest belong to third parties and that there are multiple claims from unsecured creditors with court decrees.

12. The Administrator alleges the directors are running a shell company and acting in bad faith to move assets beyond the reach of the Bank and the Administrator and he states that the Company has provided no evidence of illegality or procedural irregularity in his appointment and the application is an attempt to obstruct the Bank's lawful rights and derail the administration process. That terminating his appointment would prejudice creditors, undermine the statutory administration process, and risk asset mismanagement. He thus urges the court to dismiss the application with costs and that the administration be allowed to proceed uninterrupted to protect the interests of creditors and achieve the purpose of administration under the ***Insolvency Act***.

13. From the pleadings and submissions, it is clear that the Company is admittedly indebted to the Bank and that it has failed to meet its

repayment obligations under the facilities. At the Company's request, the Bank accommodated the Company twice in February and May 2025 by restructuring the debt, increasing it to over Kshs. 363 million and the Company still defaulted on the restructured terms. The Bank followed due process by issuing a 90-day statutory demand notice in August 2025, which the Company admits to receiving. The Company has always maintained that it is indebted to the Bank and has sought indulgences from it which were granted. It has also asserted accused the Bank of levying punitive and excessive interest which it argues has limited its capacity and ability to repay the loan in a timely fashion.

14. I have also gone through the Debenture and note that Clause 6 therein denotes the Debenture as is a "qualifying floating charge" under **section 534** of the ***Insolvency Act***, which grants the charge-holder, in this case, the Bank, the statutory right to appoint an administrator. The terms of Clause 18 of the Debenture also provides that at any time after the occurrence of an event of default on the part of the Company, the security created by or pursuant to the Debenture would become immediately enforceable. Similarly, the terms of Clause 20 of the Debenture reserved the Bank's right to appoint an Administrator at any time in the event of a default by the Company in making timely payments

of its loan obligations. The Defendants have detailed that the appointment was made on 28<sup>th</sup> October 2025 and took effect upon filing the requisite documents with the Court on 4<sup>th</sup> November 2025 and there is no allegation of a procedural flaw in the appointment itself.

15. The Company's application appears to be urging the court to compel the Bank into a bargain or restructuring of the debt. However, this court has stated time without number that it cannot force Banks to accept payment proposals of borrowers. It is not the business of courts to rewrite contracts between parties and parties are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved (See **Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] KECA 152 (KLR)**). I however note that this time round, the Company has put in place modalities to raise funds from a sale of its assets which it argues given time it shall be able to conclude the sale and repay the arrears so far due and outstanding. The flip side of the argument is that allowing the Administration process to proceed at this juncture will limit the ability of the Company to conclude the said process and probably frustrate the same. For these reasons I am inclined to allow the Application and stay the commencement of the Administration process albeit for a limited

period of 120 days. If at the expiry of the said period the Company will not have cleared the arrears now said to be standing at Kshs.77,262,395.65/=, then the Bank shall be at liberty to exercise its rights as provided for by the Charge and the Debenture without further reference to the Court or the need to re issue fresh statutory notices or even conduct fresh valuations of the suit properties.

### **Conclusion & Disposition**

16. In summary, the upshot is that the Plaintiff's application dated 11<sup>th</sup> November 2025 is allowed albeit with conditions to forthwith pay off the arrears on the loan but not later than 120 days from today. Subsequently, the 1<sup>st</sup> Defendant's application dated 20<sup>th</sup> November 2025 is denied. The Court notes that though the Plaintiff has been successful at this time, it is still indebted to the 1<sup>st</sup> Defendant and will therefore not grant it costs of this application. It is so ordered.

**DATED SIGNED and DELIVERED virtually at NAIROBI this 2<sup>nd</sup>**

**DAY OF MARCH 2026**

.....  
**J.W.W. MONGARE**  
**JUDGE**

**IN THE PRESENCE OF**

1. Ms. Ngui for the Applicant.
2. Mr. John Kithome for the Administrator.
3. Ms. Wangari Chege holding brief for Mr. Paul Ogunde for the 1<sup>st</sup> Defendant/Respondent.
4. Amos - Court Assistant

ORIGINAL