Lunga Lunga Transporters Limited v DIB Bank Kenya Limited (Commercial Case E365 of 2025) [2026] KEHC 4008 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4008 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE E365 OF 2025

JWW MONG'ARE, J

MARCH 19, 2026

BETWEEN

LUNGA LUNGA TRANSPORTERS LIMITED ..... PLAINTIFF

AND

DIB BANK KENYA LIMITED ..... DEFENDANT

RULING

Introduction and Background

1. What is before the court for determination is the application dated 3rd June 2025 by the Plaintiff seeking injunctive orders to stop the Defendant ("the Bank") from increasing the profit rate above 13% pending the hearing of this suit and that an order be issued maintaining the profit rate at 13%. The application is supported by the affidavits of the Plaintiff's director, Abdullahi Salad Ali, sworn on 3rd June 2025 and 1st July 2025. It is opposed by the Bank through the undated replying affidavit of its Legal Manager, Farida Ghazi. In addition to the pleadings, the parties have also relied on written submissions that I have considered and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

2. As submitted by the parties, the main issue for determination is whether the court ought to grant the injunctive orders sought by the Plaintiff and whether it was within the Bank's right to adjust the profit payment. The parties agree that for the Plaintiff to obtain the injunction orders, it must demonstrate that it has a prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in its favour (See Giella v Cassman Brown & Co., Ltd. [1973] E.A. 358). In Nguruman Limited v Jan Bonde Nielsen& 2 others [2013] KECA 347 (KLR), the

Court of Appeal reiterated these conditions and further clarified that they are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. This means that if the applicant does not establish a prima facie case, then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions.

3. As to what constitutes a prima facie case, the Bank rightly submits that the Court of Appeal in Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR) explained that 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 to call for an explanation or rebuttal from the latter."

4. The Plaintiff's case is that it obtained two loan facilities from First Community Bank as a Diminishing Musharaka, which is an Islamic financing structure. These facilities were taken over by the Bank in October 2022 and that during the takeover, the Bank changed the terminology of one specific facility from a Diminishing Musharaka to an "Ijara Sale and Lease Back Financing Facility." The Plaintiff claims that despite the name change, the Bank assured it that the terms remained the same and that the original agreement with First Community Bank stated that the profit rate of 13% was fixed and would not be varied. However, that starting June 2023, the Bank began issuing notices to increase the rate from 13% to 14%, then 15%, and currently 17%. The Plaintiff claims this is a breach of contract and that it met with the Bank's officials multiple times including in November 2023 and July 2024 where it claims that it was agreed the rate would revert to 13%, but the Bank did not honor this.

5. Notably, that the second loan facility, taken over as "Wakala Murabaha" has not had its rate varied, suggesting to the Plaintiff that the variation on the first account is arbitrary. The Plaintiff contends that the unlawful increments are currently harming its daily business operations and that the high rates of 17% are exorbitant and risk causing the company to default on its obligations, damaging its creditworthiness. Further, that the properties used as security for the loan are at risk.

6. In response, the Bank denies that it acted unlawfully and asserts that all actions taken regarding the Plaintiff's loan facilities were contractual and based on documents that the Plaintiff and its directors willingly signed after receiving or having the opportunity to receive legal advice. The Bank states that it issued the two fresh Letters of Offer to the Plaintiff and that the Plaintiff and its directors executed these letters, thereby accepting the new terms and that the signatures on the Letters of Offer and the subsequent Charge documents were witnessed by advocates, affirming that the Plaintiff understood and voluntarily entered into the agreements.

7. The Bank points to the specific terms within the signed Ijara facility letter that allowed the Bank to vary on notice the profit pricing and the profit pricing structure at its discretion depending on the market dynamics. The Bank admits to varying the rate from 13% to 14%, 15%, 17%, and down to 16.5% but argues that it always issued prior notice to the Plaintiff via letters and emails, as required by the contract. It avers that the increases were attributed to changes in market rates.

8. The Bank disputes the Plaintiff's claim that it signed under duress or that the terms were misrepresented. It notes that the Plaintiff is a limited company that subsequently executed formal legal charges over properties Nairobi Block 82/7002 and LR No. 209/4047 to secure the facilities. The Bank accuses the Plaintiff of not coming to court with clean hands and points out that in September 2024, the Plaintiff wrote to the Bank asking for a moratorium to stop paying the principal due to financial difficulties, which contradicts its current stance of strictly holding the Bank to the original terms. The Bank highlights that the Plaintiff lodged a complaint with the Central Bank of Kenya (CBK) which investigated and, in a letter dated 9th April 2025, effectively sided with the Bank, noting that the Plaintiff

had executed the new offers and the pricing was not fixed. The Bank contends that the Plaintiff has not challenged this finding.

9. In sum, the Bank argues that the Plaintiff is trying to rewrite a contract it freely entered into and the Bank maintains that there was no misrepresentation as the Plaintiff knew the rates were variable, that the change in terminology from Musharaka to Ijara does not change the fact that the Plaintiff accepted the new terms. The Bank states that the Plaintiff has not met the grounds required to grant an injunction, as the loss claimed is quantifiable in monetary terms and therefore not irreparable damage and that the application is an afterthought filed after the Plaintiff failed to get the desired outcome from CBK.

10. As stated, to establish a prima facie case, the Plaintiff must show a right that has been infringed. The Plaintiff claims the right to a fixed profit rate at 13% based on the original First Community Bank facility agreement. However, from the signed Letters of Offer dated 13th October 2022 especially, the impugned Ijara Sale and Lease Back Financing Facility, it explicitly contains a clause stating: "The Bank reserves the right to vary, on notice, the profit pricing and the profit pricing structure at its discretion depending on the market dynamics." The Plaintiff admits to signing these documents. Under the principle of contractual sanctity as held in National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR), courts do not rewrite contracts for parties. If the Plaintiff signed a document granting the Bank a right to vary the rate, it is difficult to argue that the Bank's exercise of that right is an infringement. The Plaintiff's argument that it did not read the terms or signed under duress is weak, as the documents were signed by directors of a limited company, and the Bank has annexed internal emails showing it temporarily reversed the rate as a gesture of goodwill, not an admission of liability.

11. The Plaintiff has also argued that changing the facility from "Diminishing Musharaka" to "Ijara" was a breach. The Bank responded that these are merely different product names with similar Sharia features, and crucially, the Plaintiff accepted this change by signing the new offers. The Bank annexed a Tripartite Agreement dated 16th March 2023 where the parties agreed to create new obligations which supports the Bank's position that the takeover resulted in a novation, not a simple transfer of the old one.

12. As was held in Mrao(supra), a court is required to look at the material presented. The Plaintiff's conduct weakens its claim of a right being infringed as evidenced by its letter of 11th September 2024, where it wrote to the Bank seeking a moratorium on payments due to financial difficulties. This suggests that the current dispute of rate increases is intertwined with the Plaintiff's inability to pay, rather than a strict breach of contract by the Bank. By continuing to service the loan even under protest and seeking concessions like a moratorium, the Plaintiff is deemed to have acquiesced to the Bank's role as a lender under the new terms. Furthermore, while the CBK decision is not binding on the Court, it is persuasive evidence at this point. The CBK investigated and found that the Plaintiff executed new offers and the pricing was not fixed. This undermines the Plaintiff's assertion that their right to a fixed rate is clear.

13. In sum, the Bank has demonstrated that any right the Plaintiff had to a fixed rate was extinguished when it signed the new Ijara facility contract, which expressly allowed for variation. The Plaintiff's argument of duress or lack of legal advice is difficult to sustain at this interlocutory stage and against a corporate entity with multiple directors who signed various charge documents later. Therefore, it is my finding that the Plaintiff has not established a clear right that has been infringed. The Bank has provided a plausible explanation and a contractual basis for its actions. Consequently, the first hurdle in the Giella(supra) principles has not been surmounted, and the application for an injunction fails at this point as per the dicta in Nguruman(supra). In any event, if the Plaintiff is to succeed at trial in its claim for breach of contract, then any loss arising from the same can be compensated by an award

of damages, which I can see the Plaintiff has already computed, fortifying the position that its claim is quantifiable (see Esso Kenya Ltd v Mark Makwata Okiya [1992] 53 (KLR)].

Conclusion and Disposition

14. The upshot is that the Plaintiff's application dated 3rd June 2025 now stands dismissed with costs. The interim orders in place are hereby discharged forthwith.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MARCH 2026

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J.W.W. MONGARE

JUDGE

In The Presence Of

Mr. Njenga for the Plaintiff/Applicant.

Ms. Kamau for the Defendant/Respondent.

Amos - Court Assistant