



REPUBLIC OF KENYA



**Zingo Investments Limited v National Bank of Kenya Limited & another (Commercial Case E563 of 2025) [2026] KEHC 5974 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5974 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E563 OF 2025**

**PM MULWA, J**

**APRIL 30, 2026**

**BETWEEN**

**ZINGO INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

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

**KOLLURY VENKATA SABBARAYA KAMASASTRY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The court is called to determine the Plaintiff/Applicant's Notice of Motion dated 1<sup>st</sup> September 2025, brought under Order 40 Rules 1, 2, and 8 and Order 51 Rule 1 and 3 of the Civil Procedure Rules, Sections 63(c) and (e), 1A, 1B, 3 and 3A of the [Civil Procedure Act](#).
2. In a nutshell the Applicant seeks a temporary order of injunction restraining the defendant either by themselves, their servants, agents or any persons from acting under them from appointing any receiver or acting as a receiver or receiver manager of the Plaintiff's assets or business and or purporting to take over the operations of the Plaintiff's business and or interfering in any way with the plaintiff's business on LR No. 9363/98(IR No. 14628/98) and LR No. 209/8628. The Inspector General of Police, through the nearest police station (Ruai Police Station) does assist in the enforcement of any orders, and the costs of the application be borne by the Respondent.
3. The application is supported by the affidavit of Robert Njoka, the director of the Plaintiff.
4. The application is premised on the grounds that on 1<sup>st</sup> September 2025 the 1<sup>st</sup> Defendant served a letter upon the Plaintiff appointing the 2<sup>nd</sup> Defendant as the receiver manager of the Plaintiff on a purported loan of Kshs. 1,219,950,528/=. The appointment was done without any notice to the Plaintiff and without a court order in breach of the provisions of the [Insolvency Act](#), 2015 thus irregular and an



- illegality. The 2<sup>nd</sup> Defendant invaded the Plaintiff's premises with goons and tried to forcefully take over the premises.
5. According to the Applicant, the move by the Defendant is meant to scuttle the investigations and interfere with the evidence and the scene of the crime by tampering with documents kept in the office of the Plaintiff. There is a pending matter in the Court of Appeal, CCOA No. E256 of 2024, and the instant interference with the Plaintiff's premises is aimed at interfering with the case.
  6. The application is opposed by the 1<sup>st</sup> Defendant, who filed a replying affidavit sworn by Paul K. Chelang'a, the Recoveries Manager, on 12<sup>th</sup> September 2025. He deposes that the Plaintiff is indebted to the Bank pursuant to loan facilities secured by various charges and debentures executed between 2013 and 2018. The Plaintiff admitted the debt in a consent dated 20<sup>th</sup> December 2017 in HCCC No. 227 of 2016 in the sum of USD 5,666,000, but has since failed to honour the repayment terms despite restructuring and further financial accommodation.
  7. He further contends that the Plaintiff diverted a portion of the restructured facility (USD 1.1 million) from its intended working capital purpose and defaulted in repayment. The Defendant avers that the Plaintiff's suit in HCCC No. E102 of 2019 was dismissed on 14<sup>th</sup> March 2024, and both an appeal and an application for stay were unsuccessful, leaving the debt outstanding and continuing to accrue.
  8. He avers that the current indebtedness exceeds the value of the secured assets, thereby exposing the Bank to loss. It relies on loan account statements showing outstanding sums exceeding USD 7.5 million and a further restructured balance of approximately USD 973,000.
  9. The Bank maintains that it holds valid securities, including multiple debentures, which expressly confer the right to appoint a Receiver and Manager upon default without the necessity of prior notice. In exercise of those contractual and statutory rights, and following service of a demand notice dated 1<sup>st</sup> September 2025, the 1<sup>st</sup> Defendant appointed the 2<sup>nd</sup> Defendant as Receiver and Manager on 28<sup>th</sup> August 2025, and duly notified the Plaintiff and relevant authorities.
  10. He contends that the appointment was lawful, regular, and in accordance with the debenture instruments, and that the Receiver is entitled to take possession, manage, and, if necessary, realize the secured assets to recover the outstanding debt.
  11. The 2<sup>nd</sup> Defendant's insolvency practitioner of over 25 years' experience filed a replying affidavit sworn on 29<sup>th</sup> September 2025. He deposes that he was validly appointed as Receiver and Manager of the Plaintiff pursuant to a Deed of Appointment dated 28<sup>th</sup> August 2025, made under four debentures executed between 2013 and 2015.
  12. He avers that all the debentures were created prior to the coming into force of the *Insolvency Act, 2015* and expressly conferred upon the lender the contractual right to appoint a receiver and manager. In his view, that right was preserved under section 690 of the *Insolvency Act*, and therefore did not require a court order. He relies on, inter alia, on *In re Arvind Engineering Limited* [2019] eKLR to support the proposition that such appointments may be effected without recourse to court.
  13. He contends that his appointment complied with the law, the terms of the debentures, and established industry practice. He further states that the Plaintiff had been served with a demand/notice dated 1<sup>st</sup> September 2025 calling for repayment of the outstanding debt, failing which the receivership would take effect, which notice the Plaintiff acknowledged.
  14. He denies allegations of illegality or forceful takeover, asserting that he attended the Plaintiff's premises with a limited team, identified himself, and presented his appointment documents. Access was



initially denied by security personnel acting on the instructions of the Plaintiff's director, necessitating prolonged engagement before eventual assumption of control.

15. He further deposes that upon assuming control, he ensured continuity of the Plaintiff's operations, arranged security, and caused publication of the receivership in both the Daily Nation and the Kenya Gazette. He also complied with an interim court order issued on 3<sup>rd</sup> September 2025 immediately upon being notified.
16. He maintains that the receivership was lawful, regular, and properly effected, and urges that the Plaintiff's application challenging his appointment is devoid of merit.
17. The application was heard by way of written submissions which I have considered.

### **Analysis and determination**

18. I have considered the pleadings, the affidavits on record, and the submissions by counsel. In my view, the issue that arises for determination is whether the application is merited.
19. The principles governing the grant of interlocutory injunctions are settled. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal emphasized that the conditions in *Giella v Cassman Brown* are sequential and not to be applied as alternatives.
20. The first limb requires the Applicant to demonstrate a prima facie case with a probability of success. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, a prima facie case was described as one which discloses an arguable right that has been infringed.
21. The Applicant's case is that the appointment of the 2<sup>nd</sup> Defendant as Receiver and Manager was unlawful for want of notice and absence of a court order.
22. It is, however, not in dispute that the Plaintiff is indebted to the 1<sup>st</sup> Defendant. Indeed, the Plaintiff admitted the debt in a consent dated 20<sup>th</sup> December 2017 in the sum of USD 5,666,000, and that admission has not been controverted.
23. It is trite that a court will not ordinarily grant an injunction to restrain a chargee from exercising its statutory or contractual remedies where default is admitted. The rationale is that the lender is merely seeking to realize security for a debt that is due.
24. The evidence before the Court further shows that the lending was secured by debentures. Clause 17 of the debenture expressly provides for the appointment of a Receiver and Manager upon default, without the necessity of court intervention. The clause provides as follows:

“At any time after the principal monies hereby secured become payable either as a result of a lawful demand being made by the lender or under the provisions of clause 13 hereof, the lender or any officer of the lender duly authorized in that regard may appoint in writing any person or persons whether an officer or officers of the lender or not to be a receiver or receiver and a manager or receivers or receivers and managers (herein after referred to as the Receiver) of the property and assets hereby charged or any part thereof upon such terms as the remuneration or otherwise as the Lender shall think fit and may in like manner from time to time remove any receiver and manager or receivers and managers so appointed and appoint another or others in his or her stead.”

25. The parties herein voluntarily entered into those instruments. This Court cannot impose conditions, such as prior notice or court sanction, where none exist in the contract.



26. In this regard, I must reiterate the well-settled principle that courts do not rewrite contracts for parties. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KECA 362 (KLR), the Court of Appeal held that parties are bound by the terms of their contract unless vitiated by fraud, coercion or undue influence.
27. Further, I find that the law is settled that a secured creditor is entitled to exercise its rights under the security document or statute in the event of default by the company. That power is not subject to insolvency proceedings commenced against the company by any other creditor. Further, an administrator or liquidator cannot interfere with the exercise of those rights. A fortiori, any other creditor of the company cannot intervene in the exercise of the secured creditor's rights against the secured property. (See *East Africa Cables Plc v Ecobank Kenya Limited; SBM Bank (K) Limited (Interested Party)* [2020] eKLR).
28. Section 690 of the *Insolvency Act*, 2015 preserves the rights of debenture holders under floating charges created prior to the commencement of the Act. The Court in *In re Arvind Engineering Limited* [2019] eKLR affirmed that such rights include the power to appoint a receiver without recourse to court.
29. It is expected that once a Receiver and Manager is appointed, he or she is expected to take over the control of the affairs of the Company. In *Samuel Kamau Macharia & Anor vs Kenya Commercial Bank Limited & 2 others* Application No 2 of 2011; [2012] eKLR, the Supreme Court expressed itself as follows:

“...While it remains the position that a receiver and manager supplants the board of directors in the control, management and disposition of the assets over which the security rests, it is also acknowledged that the receiver and manager does not usurp all the functions of the company's board of directors. The extent to which the powers of the directors are supplanted will vary with the scope of the receivership and management vested in the appointee. Directors have continuing powers and duties. Their statutory duties include: the preparation of annual accounts; the auditing of those accounts; calling the statutory meetings of shareholders; maintaining the share register and lodging returns.”
30. In the present case, there is no evidence placed before the Court to demonstrate that the debentures are invalid or that the power of appointment was exercised contrary to their terms.
31. On the contrary, the evidence shows that a demand notice dated 1<sup>st</sup> September 2025 was issued and acknowledged.
32. It is also not lost to the Court that the dispute between the parties has previously been the subject of litigation, instituted in HCCC No. E102 of 2019, which was dismissed, and no stay orders were obtained on appeal. While I refrain from making a conclusive finding on the doctrine of res judicata at this stage, it is apparent that the present application seeks, in effect, to impede the enforcement of rights that have already crystalized.
33. In the premises, I find that the Applicant has failed to establish a prima facie case with a probability of success.
34. The second limb requires the Applicant to demonstrate that it will suffer irreparable harm which cannot be compensated by an award of damages
35. The dispute herein arises from a commercial lending transaction secured by identifiable assets. The law is settled that where property is offered as security, it becomes a commodity for sale in the event of default. See *Andrew M. Wanjohi v Equity Building Society & 7 others* (2006) eKLR).



36. Any loss that may arise from enforcement is therefore quantifiable and compensable in damages. The Applicant has not demonstrated any exceptional circumstances to warrant a contrary finding.
37. On the issue of the balance of convenience, even if I were in doubt, which I am not, the balance of convenience would favour the Respondents.
38. In the final analysis, the Applicant has failed to meet the threshold for the grant of an interlocutory injunction.
39. Accordingly, the Notice of Motion dated 1<sup>st</sup> September 2025 is hereby dismissed with costs to the Defendants/Respondents.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Ms. Tuwei h/b for Mr. Kirimi for Plaintiff/Applicant

Mr. Chege for 1<sup>st</sup> Defendant

Mr. Tugee for 2<sup>nd</sup> Defendant

Court Assistant: Lispa

