



**Kitamaiyu Limited v China Ghansu International Corporation for Technical Corporation Company Limited; Credit Bank Limited (Objector) (Environment & Land Case 128 of 2018) [2024] KEELC 7197 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7197 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 128 OF 2018**

**JG KEMEI, J  
OCTOBER 29, 2024**

**BETWEEN**

**KITAMAIYU LIMITED ..... PLAINTIFF**

**AND**

**CHINA GHANSU INTERNATIONAL CORPORATION FOR TECHNICAL CORPORATION COMPANY LIMITED ..... DEFENDANT**

**AND**

**CREDIT BANK LIMITED ..... OBJECTOR**

**RULING**

1. Credit Bank Limited, the Objector filed an application on 7/7/2022 seeking the following orders:-
  - a. Spent.
  - b. The Honourable Court be pleased as to issue an order of stay of execution of the warrants of attachments and sale of immovable property pending the hearing and determination of this application.
  - c. The Honourable Court be pleased to issue an order stopping the transfer of ownership of any of the motor vehicles namely; KCP 080W; KCP 082W; KCP 083W; KHMA 396M; KHMA 509N; SERIAL NO. YZZ31313J0878 pending the hearing and determination of this application.
  - d. The Honourable Court be so pleased to issue an order directing the Advocates of the Decree holder, Kembi Gitura and Company Advocates to hold the proceeds of sale in trust pending the hearing and determination of this application.



- e. The Honourable Court be pleased as to issue an order stopping the sale and transfer of / raising the warrants and attachment and sale over motor vehicles namely KCP 080W; KCP 082W; KCP 083W; KHMA 396M; KHMA 509N; SERIAL NO. YZZ31313J0878.
  - f. The Honourable Court be pleased to issue an order directing that any proceeds of sale from the sale of motor vehicles namely; KCP 080W; KCP 082W; KCP 083W; KHMA 396M; KHMA 509N; SERIAL NO. YZZ31313J0878 be released to the Objector.
  - g. The costs of this application be in the cause.
2. The application is premised on the grounds set out as follows:-
- a. The Applicant herein has stumbled upon an advertisement for the sale of the following motor vehicles owned by the Judgment Debtor:-
    - a. KCP 080W
    - b. KCP 082W
    - c. KCP 083W
    - d. KHMA 396M
    - e. KHMA 509N
    - f. SERIAL NO. YZZ31313J0878
  - b. The advertisement indicates that the auction shall take place on the 7<sup>th</sup> July, 2022 at 11.00am.
  - c. The Applicant has a legal interest over all the assets of the Judgment Debtor by virtue of a fixed asset debenture dated 2<sup>nd</sup> July, 2019.
  - d. The Debenture at Clause 3 (b) places a fixed charge over all motor vehicles owned by the Judgment Debtor.
  - e. The Debenture has crystallized by virtue of default by the Judgment Debtor in settling its accounts with the Objector and the Judgment Debtor owes the Objector Kshs. 65,994,034.86.
  - f. The Applicant is apprehensive that if the auction is successful, it will have been deprived of its rights as a debenture holder.
  - g. The Applicant is further apprehensive that the proceeds of sale of the auction will be released to the Decree Holder before this application is determined on merit and it is thus in the interest of justice that the application herein be heard on a priority basis and the orders granted.
3. The application is further supported by the affidavit of Wainaina Francis Ngaruiya, head of legal department of the Objector's bank. That he learned of the auction advertisement on the 6/7/2022 comprising of the motor vehicles belonging to the Judgment Debtor. The auction was scheduled for 7/7/2022. He averred that the Objector holds an all asset fixed debenture over the assets of the Judgment Debtor dated 2/7/2019. In addition, the Judgment Debtor has defaulted in settling its accounts with the Objector in the sum of Kshs. 65.9 Million and therefore the debenture has crystalized in its favour. That should the motor vehicles be sold by public auction the Objector is apprehensive that it will not be able to assert its rights as a debenture holder. Interalia, that in the event that the motor vehicles are sold, the Court should issue an order stopping the release of the proceeds of sale to the Decree holder pending the hearing and determination of this application.



4. On the 14/7/2022 the Decree holder gave notice of its intention to proceed wholly with the execution of Judgment Debtor's movable properties as proclaimed and attached by Garam Auctioneers on the 7/6/2022.
5. The application has been opposed by the Decree holder vide the Replying Affidavit sworn by Hon. Maina Wanjigi on 15/7/2022. The deponent avers that warrants of sale were issued by this Court on 31/5/2022 to Garam Auctioneers and the Judgment Debtors movable properties proclaimed and attached on the 7/6/2022 to satisfy the debt owed to the Decree holder in the sum of Kshs. 53,387,422/-. The auctioneers were able to seize the motor vehicles from the Judgment Debtor's yard. That an application for breaking orders against the Judgment Debtor to seize other assets under the said proclamation is pending before this Court. The auction was scheduled for 7/7/2022. He contended that the application is intended to defeat the ends of justice and deprive the Decree holder of the fruits of its Judgment. He stated that despite participating in the garnishee proceedings in 2021 the Objector never raised any protest under the said debenture. The act of invoking the debenture by the Objector imputes an influence or collision between the Objector and the Judgment Debtor to defeat the rights of the Decree holder.
6. The deponent further stated that the debenture is a floating charge over the assets of the Judgment Debtor which is yet to crystalize. As such the Judgment of the Decree holder takes precedence over the Judgment Debtor. Inter alia, the log books of the said motor vehicles are registered solely in the name of the Judgment Debtor. Citing Clause 4 of the debenture the deponent argued that the Judgment Debtor is obligated in the event of a Judgment or Order made against it to comply with the said Judgment within seven days. That the Judgment against the Judgment Debtor has not been subjected to the terms of the debenture as required. Further that the Judgment Debtor is in default of its obligations under the debenture and cannot seek protection thereof. Citing the provisions of Clause 4 of the debenture, the deponent stated that the Objector has failed to appoint an administrator on asserting that the Judgment Debtor is in default in settling its accounts. In conclusion that the Objector's rights reserved in the said debenture have been compromised by its refusal, negligence and inability to act on the breaches by the Judgment Debtor.
7. In a Supplementary Affidavit filed on 4/8/2022 Wainaina Francis Ngaruiya further deponed that the Objector participated in the garnishee proceedings and confirmed to the Court that the account held by the Judgment Debtor had no funds at all. Given the status of that account he stated that there was no obligation on the part of the Objector to inform the Decree holder of the existing debenture in its favour. Inter alia there was no order issued by the Court requiring it to do so.
8. He further stated that the debenture is not a floating charge over the motor vehicles but a fixed charge as stated in Clause 3(b) of the debenture. That the Decree holder is a stranger to the debenture between the Objector and the Judgment Debtor and as such cannot infer any breaches on the terms of the debenture or seek to enforce the same in its favour. That the entire debenture has crystalized by virtue of the decree of the Court and is now entirely a fixed charge as set out under Clause 4(i) of the debenture. That it is within the discretionary powers of the Objector to appoint or not to appoint an administrator under Clause 17(a) of the debenture and any delay or failure in exercising any rights under the debenture is not a waiver of the Objector's rights. That the Objector is enforcing its rights under the debenture in order to recover amounts legally owed to it by the Judgment Debtor.

### **The written submissions**

9. The Applicant/Objector filed submissions on 7/9/2022. Through the firm of Kimondo Gachoka & Co. Advocates.



10. As to whether the debenture is a fixed or a floating debenture, the Applicant cited the provisions of Clause 3(b) of the debenture and submitted that the debenture is a fixed charge over the motor vehicles, the subject of this application. The case of *Landmark Port Conveyors Limited Vs. Buzeki Enterprises Limited* [2019] eKLR was cited where the Court held as follows:-

“A fixed charge is a charge on specific property of a Company, as a contrasted with a floating charge. It gives the holder of the charge an immediate proprietary interest in the assets subject to charge which binds all those into whose hands the assets may come with notice of charge. Unless it obtained consent of the holder of the charge, the Company would be unable to deal with the assets without committing a breach of terms of charge..... In short, a fixed charge would deprive the Company of access to its cash flow, which is the life blood of a business. Where, therefore, the parties contemplated that the Company would continue to carry out business despite the existence of the charge, they must be taken to have agreed on the form of the charge which did not possess the ordinary incidence of a fixed charge.”

11. To buttress the above points are Clause 3, 6 and 7 of the debentures. The Objector submits that the debenture is fixed, operates from a point of priority and that the motor vehicles attached by Decree Holder are subject to a fixed charge. Furthermore, the vehicles are all registered in the joint names of the Objector and Judgment Debtor.
12. Does the debenture take precedents over the decree held by the Decree Holder? The Court was pointed to the case of *Desbros Kenya Limited -Vs- General Printers* which stated as follows:-

“From the foregoing, it is that attachment and execution were some of the agreed circumstances under which crystallization would occur. This means that in the instant case, the act of proclaiming the charged property had the immediate effect of crystallizing the floating charges. The Debentures did not envisage the appointment of a Receiver by the Objector(s) as the point of crystallization as argued by the Plaintiff. In the case of *Lochab Brothers v Kenya Furfural Co. Ltd* [supra], the Court of Appeal noted that once a Floating Charge becomes crystallized through any of the events of default mentioned in a Debenture, the Debenture Holder gains priority over the assets of a Company unless the said assets have been sold and or execution is complete. This position was affirmed in the case of *Mackenzie (Kenya) Ltd v Pharmico Ltd* [supra].”

13. The Applicant submits that pursuant to Clause 7 of the debenture the Objector will be first in priority to be paid based on the priority on the debenture agreement. The Court was urged to stop the intended execution by the Decree Holder because the execution is yet to take place. That the Objector's rights rank in priority over the said motor vehicles and against the Decree Holder. So much so that the decree held by the Decree Holder and the subsequent proclamation and attached is inferior to the debenture. It is the Applicant's position that the debenture has crystallized following the default in payments secured under the debenture by the Judgment Debtor. The decree held by the Decree Holder further supports the position that the entire debenture has crystallized. To buttress the above point the Applicant relied on the case of *Menengai Rolling Mills Ltd & Anor Vs Blue Nile Wire Products Ltd & Anor* (2019) eKLR where the Court held as follows:-

“Crystallization in this context is the process of a floating charge converting into a fixed charge upon the occurrence of certain events. In the matter at hand, the Bank and the Company, contractually provided the events upon which the floating charge constituted in the debenture would automatically crystallize.”



14. Citing Clause 29 of the said debenture and the case of Kenya Women Finance Trust Vs. Bernard Oyugi Jaoko & 2 Others (2018) eKLR the Applicant submitted that delaying or failure by the Objector to exercise its rights under the debenture is not a waiver of rights to enforce the debenture.
15. It was also submitted that the Decree Holder is a stranger to the debenture which is primarily between the Objector and the Judgment Debtor. The provisions of the debenture gives the Objector's bank discretion on whether to act and how or when to do such action in accordance with the powers under the debenture. The Decree Holder cannot seek refuge in or rely on the debenture. The Decree Holder has no standing to infer any breaches on the terms of the debenture or seek to enforce the said terms. On the contrary the Objector retains the right to enforce its legal interest over the Judgment Debtor's property secured through the debenture. The Decree Holder therefore cannot rely on the contractual obligations as comprised in the debenture / floating charge as it is not a party to it. That the rights of the Objector are firmly established in the debenture. In conclusion the Applicant urged the Court to grant the application.
16. The Decree holder filed written submissions through the firm of Kembi – Gitura & Co. Advocates. The Decree Holder submitted that the application is brought in bad faith with sole objective of defeating the ends of justice and depriving it of its fruits of the Judgment. Citing the case of Republic Vs. Ahmad Abolfathi Mohammed & Another, SC Petition No. 39 of 2018; [2019]Eklr the Decree holder accused the Objector of misleading the Court by stating that the Judgment Debtor held no account with the Objector's bank therefore the Objector has come to Court with unclean hands. The Court was urged to be guided by the decision in the case of Robson Vs Smith (1985)CH page 118 where the Court stated as follows:-

“Debentures like the plaintiff 's have been frequently considered by the Courts. They constitute what is called a “floating security” – that is to say, they allow the Company to deal with its assets in the ordinary course of business until the Company is wound up or stops business, or a receiver is appointed at the instance of the debenture -holders, or, as it has been said they constitute a charge, but give a licence to the Company to carry on its business. So long as the debentures remain a mere floating security, or, in other words, the licence to the Company to carry on its business has not been terminated, the property of the Company may be dealt with in the ordinary course of business as if the debentures had not been given, and any such dealing with a particular property will be binding on the debenture -holders, provided that the dealing be completed before the debentures cease to be merely a floating security.”
17. The Court was also pointed to Halsbury's Laws of England, 2<sup>nd</sup> Edition, Volume 5 paragraph 784:-

“... the Court will not restrain an execution from proceeding nor refuse to make a garnishee order absolute unless the debenture-holder takes some steps to turn his security from a floating into a fixed charge.”
18. Relying on the case of Ramak Port Conveyors Ltd Vs Buzeki Enterprises Ltd & Another (2019)eKLR the Decree holder submitted that the Objector's debenture was a floating charge which will only crystallize upon the happening of the events listed under Clause 4(i) of the debenture. Furthermore, the debenture obliged the Judgment Debtor to comply with an order or Judgment of the Court within seven days. Therefore, the Judgment Debtor was bound to fulfil that obligation so as to gain any benefit or protection of the terms and conditions of the debenture. That the Judgment Debtor is in default of its obligations under the debenture. The Court was urged not to condone or countenance the default of the Objector and the Judgment Debtor in particular the Objector was accused of failing



to appoint an administrator. Further that the debenture being a floating charge has not crystallized and cannot prevent an attaching decree holder from proceeding with the execution process. In other words' the Judgment Creditor takes precedents over the Objector. The case of Kahagi Vs. Ken City Clothing Limited (1982)KLR 642 was cited in support of that proposition. It was also submitted that the motor vehicles were not held jointly by the Judgment Debtor and the Objector as a result of which the Objector cannot lay any claim over the said motor vehicles. See the case of Arun C Sharma Vs. Ashana Raikundalia T/A A Raikundalia & Co Advocates & 2 Others [2014 eKLR.

19. The key issues for determination are;
  - a. Whether there is a valid debenture
  - b. Whether the debenture has crystallized and who has priority on any assets of the debtor vis-à-vis the Objector.
  - c. Who meets the cost of the application?
20. It is not in dispute that the decree holder obtained warrants of sale of moveable properties of the Judgement Debtor to recover the sum of Kshs. 55,387,422/-. It is also not in dispute that the Objector entered into a debenture with the Judgement Debtor dated the 22/7/2019 in which several covenants over the moveable assets of the debtor were agreed. The crux of the application is the issue of priority between the unsecured creditor (Judgment Creditor/Plaintiff) and the secured creditor (Objector/bank).
21. Is there a valid debenture? The all-asset debenture creates fixed and floating charges over a Company's assets, both present and future. The charges created by this debenture are registerable under the Companies Act 2015 (the "Companies Act") at the Companies Registry. Concurrently, this debenture creates security rights over the Company's moveable assets which are registerable under the Movable Property Security Rights Act ("MPSRA") at the Collateral Registry.
22. At this juncture I am compelled to define a floating debenture. In the case of Robson Vs Smith (1895) 2 Ch 118 the Court held as follows;

"Debentures like the Plaintiff's have been frequently considered by the Courts. They constitute what is called a "floating security" – that is to say, they allow the Company to deal with its assets in the ordinary course of business until the Company is wound up or stops business, or a receiver is appointed at the instance of the debenture -holders, or, as it has been said they constitute a charge, but give a licence to the Company to carry on its business. So long as the debentures remain a mere floating security, or, in other words, the licence to the Company to carry on its business has not been terminated, the property of the Company may be dealt with in the ordinary course of business as if the debentures had not been given, and any such dealing with a particular property will be binding on the debenture -holders, provided that the dealing be completed before the debentures cease to be merely a floating security."

23. The Taxman's Law Dictionary provides,

"A fixed charge is a charge on specific property of a Company, as a contrasted with a floating charge. It gives the holder of the charge an immediate proprietary interest in the assets subject to charge which binds all those into whose hands the assets may come with notice of charge. Unless it obtained consent of the holder of the charge, the Company would be unable to deal with the assets without committing a breach of terms of charge.....In short, a



fixed charge would deprive the Company of access to its cash flow, which is the life blood of a business. Where, therefore, the parties contemplated that the Company would continue to carry out business despite the existence of the charge, they must be taken to have agreed on the form of the charge which did not possess the ordinary incidence of a fixed charge.”

24. Clause 3 (b) of the debenture states that ;

“The security operates as a fixed charge over all the following assets; all motor vehicles, plant and machinery (whether or not fixed to any immoveable property) tools and chattels now and at any time hereafter belonging to the Company and all the right title and interest of the Company in any motor vehicles, plant, and machinery, tools, and chattels from time to time held by the Company under any hiring, hire purchase retention of title or leasing arrangements or agreements and all chattels now or at any time hereafter leased or rented by the Company to any other person together in each case with the benefit of the related hiring, leasing or rental contract and any guarantee indemnity or other security for the performance of the obligation of any other person under or in respect of such contract.”

25. When a floating security upon all assets of the Company becomes fixed it constitutes a charge upon all the property and assets then belonging to the Company. It has priority over any subsequent equitable charges and over unsecured creditors.

26. A debenture is a security contract between a borrower and a lender which creates security rights in favour of the lender over the present and future assets. In this case the intention of the parties to create a fixed charge over the assets of the Company was certain.

27. Section 878 of the *Companies Act*, 2015 provides that a Company which creates charges as provided for in Subsection (4) shall register the particulars of the charges created, and any document by which the charges are created. This provision applies to the following charges created by a Company:

- “(a) a charge on land or any interest in land (other than a charge for any rent or other periodical sum issuing out of land) owned by the Company or in which it has a proprietary interest;
- (b) a charge created or evidenced by a document that, if executed by a natural person, would require to be registered as a bill of sale;
- (c) a charge for the purposes of securing an issue of debentures by the Company;
- (d) a charge on the Company's uncalled share capital (if any);
- (e) a charge on calls made by the Company but not yet paid;
- (f) a charge on the Company's book debts;
- (g) a floating charge on the Company's property or undertaking;
- (h) a charge on a ship or aircraft, or a share in a ship or aircraft, owned by the Company or in which it has a proprietary interest;
- (i) a charge on the Company's goodwill or intellectual property.”

28. A Company is obliged to seek registration within 30 days of creating the charge (Section 885). Section 889 posits that if a registrable charge or security right is not registered, it becomes null and void as against a liquidator, administrator, and any creditor of the Company. This, however, does not affect



the obligation for repayment of the money secured by the charge. When a charge becomes void for want of registration the money secured by the charge becomes payable immediately. This position was reiterated by the Court in Equip Agencies Limited Vs. I & M Bank Limited [2017] eKLR.

29. In the case of Silverspread Hardwares Limited in Favour of Bank of Baroda (Kenya) Limited (2021) eKLR it was held that;

“The purpose of the registration of the charge with the Registrar of Companies is to protect the interests of the Applicant herein and the general body of creditors in line with the principles and rules on assets and liabilities of a Company. Non-failure to register a charge at the Company’s registry has serious consequences especially to the chargee’s right of recourse against the charged property.”

30. The Court has perused the debenture and finds that it is compliant with the above provisions. The issue is therefore answered in the positive.

Whether the debenture has crystallized and who has priority on any assets of the debtor vis-à-vis the Objector

31. Where a challenge of priority arises between a secured creditor and an unsecured creditor, the secured creditor ordinarily opposes the execution process by initiating Objector proceedings seeking to halt this process. The Kenyan Courts have adjudicated on this issue and have held that generally, a secured creditor has priority over an unsecured creditor if three conditions are satisfied.

32. First, the security rights must be duly registered. In James Kinene Muraguri Vs. Raffia Bags (East Africa) Limited (Judgment Debtor); Diamond Trust Bank Kenya Limited (Objector) (2022)eKLR, the Court dismissed the Objector’s application on the basis that the Objector entered into the initial debenture with Polycem Bags Limited (PBL) in 2012, and by the time it was registered, PBL had changed its name to Raffia Bags (East Africa) Limited, hence the debenture was incapable of creating legal or equitable rights accruing or accrued to it.

33. The second condition is that the attachment and execution against the Company’s assets must be included as some of the events of default in the asset debenture. Once this event takes place, the floating charge created over the assets crystallizes and the debenture holder gains priority over the assets of the Company.

34. In Desbro (Kenya) Limited Vs. General Printers Limited; I & M Bank Limited & Another (Objector/Applicants) (2021)eKLR, the 1<sup>st</sup> Objector had created fixed and floating debentures over all the assets of the Company (Judgment Debtor) which were duly registered at the Companies’ Registry on 28th April, 2015, while the 2<sup>nd</sup> Objector had several Debentures including one dated 3<sup>rd</sup> July, 2012 which had then been registered under section 92 of the MPSRA. The Plaintiff obtained Judgment and thereafter commenced execution proceedings which prompted two applications by the 2 Objectors. In permitting the Objectors’ application, the High Court found that attachment and execution were some of the agreed circumstances under which crystallization would occur, and the Plaintiff’s act of proclaiming the charged property had the immediate effect of crystallizing the floating charges. This position was also held in Lochab Brothers Vs. Kenya Furfural Co. Ltd (1983)eKLR.

35. Finally, the execution process should not have been completed by the time the Objector proceedings have been initiated. The Courts in Mackenzie (Kenya) Ltd Vs. Pharmico Ltd (1976) eKLR and Lochab Brothers Vs. Kenya Furfural Co. Ltd (supra) understood the law to be that the right of an executing creditor ranks in priority over that of a debenture-holder only where execution has been completed by sale of the attached property before the charge crystallizes.



36. In the case of *Menengai Rolling Mills Limited & Anor Vs Blue Nile Wire Products Limited & Anor* (2019)eKLR the Court defined crystallization to mean:

“Crystallization in this context is the process of a floating charge converting into a fixed charge upon the occurrence of certain events. In the matter at hand, the Bank and the Company, contractually provided the events upon which the floating charge constituted in the debenture would automatically crystallize.”

37. In the debenture at hand, the parties agreed on events that would lead to crystallization of the floating debenture in Clause 6 as follows;

“Subject to Clauses 3, 4 and 5 the security exists and operates as a specific charge in respect of any identifiable or ascertainable property or assets of the Company instantly and immediately as provided in Clause 7 from the time of the happening of the following events;  
... (c) When any Creditor or other person attempts to levy or issue any distress or execution against any of the property or assets of the Company or obtain any order for the attachment of debts in respect of any debt due to the Company.”

38. In Clause 7 of the debenture the parties appear very deliberate on the effects of the fixed charge which was to give the Objector priority in payment if the Company owes other persons. It states as follows;

“The effect of the charge over the security wherever and whenever it operates as a specific charge in accordance with the provisions of Clauses 3, 4, 5 and 6 in respect of all or any of the property or assets of the Company is intended to have and shall have a first paramount priority over the claims whether proprietary or personal of all creditors (whether secured or unsecured) and of all purchasers whether absolute or by way of security and shall by the act of the Company create or vest a proprietary right or interest by way of specific security in the Bank prior in time to and before any right of interest of .... (g) any creditor or other person described in Clause 6(c).”

39. It has been disclosed that the assets have not been sold hence execution though has commenced is yet to be complete.

40. The Court finds that the events of crystallization of the floating charge into a fixed charge occurred when the Judgement in favour of the Judgement Debtor was issued as at this stage it was in default in the payments owed to the Plaintiff. The result of such default in this case is the proclamation of the assets of the Company.

41. In the end the Court finds that the debenture was both a fixed and floating charge; the parties agreed on the happening of events that would trigger the floating charge to crystallize into a fixed charge; the priority of payments was agreed in the debenture in favour of the Objector; the debenture was duly registered in compliance of the provisions of the *Companies Act*, hence the Objector held a valid debenture; the Judgement creditor has defaulted in the payment of the decree hence triggering the conversion of the floating charge to a fixed charge giving priority to the Objector against the Plaintiff Applicant; the execution process should not have been completed by the time the Objector proceedings have been initiated; the Objector has the discretion to appoint or not to appoint a receiver; the non-appointment of the receiver does not preclude the Objector from taking priority over the assets of the Judgement Debtor; there was no evidence of collusion between the Judgement Debtor and the Objector placed before the Court for the Court to form an opinion on it.



42. In the end the Application has merit.
43. It is allowed with costs in favor of the Objector.
44. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**DELIVERED ONLINE IN THE PRESENCE OF;**

Ms. Nganga for Plaintiff

Kibaara HB Mburu for Defendant

Ms. Maitai for Objector

Court Assistants – Phyllis/Lilian

**AMENDMENT OF RULING DATED 28/9/2023**

Guided by the provisions of Section 3A and Section 99 of the [Civil Procedure Act](#), IT IS HEREBY ORDERED THAT:-

Paragraph 42 and 43 of the Ruling delivered on 28/9/2023 be and is hereby corrected to read:-

PARAGRAPH 42

In the end the Application has merit.

PARA 43.

It is allowed with costs in favor of the Objector.”

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29<sup>TH</sup> DAY OF OCTOBER, 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**DELIVERED ONLINE IN THE PRESENCE OF;**

Ms. Nyakiana HB Nganga for Plaintiff

Kibaara for the Judgment Debtor

Ms. Abiaza HB Ms. Maitai for the Objector

Court Assistants – Phyllis/Oliver

