REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 482 OF 2015

RICHARDSON AND DAVID LIMITED.....PLAINTIFF

VERSUS

KENYA DEPOSIT INSURANCE CORPORATION.....1ST DEFENDANT

CENTRAL BANK OF KENYA.....2ND DEFENDANT

R U L I N G

INTRODUCTION

1. The **Notice of Motion** under consideration is dated **2nd October 2015** and is filed by the Plaintiff. The application seeks to secure the following orders:-

1) That the Honourable Court be pleased to certify this application urgent, make a further order that its service be dispensed with in the first instance and hear it exparte.

2. That the Honourable court be pleased to grant the plaintiff leave to serve the Defendants and all other parties who may wish to participate in these proceedings including depositors, creditors, debtors, shareholders and directors of DUBAI BANK KENYA LIMITED (DBKL) by way of advertisement in The Standard Newspaper.

3. That conservatory and injunctive orders pursuant to Article 23 (3) of The Constitution of Kenya 2010, and order 40 rules 1 and 2 (CPR) do issue to retrain the 1st and 2nd Defendants jointly and severally from violating the provisions of section 53 (1) of the Kenya Deposit Insurance Act 2012, by prematurely liquidating DBKL and specifically from closing branches and/or dismantling ICT systems of DBKL or in any manner, whatsoever, upsetting the status which prevailed at DBKL as at the date of declaration of its receivership on 14th August 2015, and conserving its assets in that state;

a) initially pending the hearing and determination of this application inter-parties;

b) and subsequently, pending the hearing and determination of the suit.

4. That the Honourable court be pleased to direct the Defendants, jointly and severally to suspend any attempt to liquidate DBKL before fully complying with the mandatory provisions of section 53 (1) of the Act and to formulate a frame work within which the Plaintiff and any other interested depositor/party and creditors of DBKL can convert their credits into equity and participate without any restriction, whatsoever, in all attempts aimed at reviving DBKL and stabilizing DBKL.

5. That costs of this application be provided for.

2. The application is premised on the grounds set out therein and is supported by affidavit of **Valiveetil Pius Lawrence** sworn on **2nd October 2015,** and Supplementary Affidavit sworn on **21st October 2015,** and 2nd Supplementary Supporting Affidavit sworn on **23rd October 2015,** both by the said **Mr. Lawrence**, who states that he is a director of the Plaintiff Company and is competent and authorised to debone to the matters stated in these supporting affidavits.
3. When the matter first came to court on 2nd October 2015 prayer 2 of the application was allowed wherein the Plaintiff/Applicant was granted the leave to serve the Defendants and other parties who may wish to participate in these proceedings including depositors, creditors, debtors, shareholders and directors of Dubai Bank Kenya Limited (DBKL) by way of advertisement in the standard newspaper.

4. Pursuant to that leave, some parties have joined these proceedings as Interested Parties. These are Mr. Hassan Zubedi as shareholder and employee of D B K L and M/s Shanxi Geological Engineering, both of whom support this application, with Mr. Hassan Zubedi filing a replying affidavit on 12th October 2015.
5. In brief the Applicant's case is that it is a depositor with DBKL holding several bank accounts with approximate amount of Kshs.142,000,000/-, as at 14th August 2015, when DBKL was placed under receivership. The Applicant is not opposed to the execution of the receivership to the fullest extent provided for in section 53 (1) of the Act, but is totally opposed to attempts by the Defendants to liquidate DBKL prematurely, as such an action would subject it and other large depositors of DBKL to irreparable loss and damage. The Applicant's case is that the 1st Defendant in violation of the provisions of section 53 (1) of the Act, has embarked on the process of liquidating DBKL, with such alacrity and speed that portrays malice, self-interest and desire to dismantle and completely destroy the substratum of DBKL. The Plaintiff prays for conservatory and injunctive orders to restrain the Defendants from undertaking haphazard and disorderly liquidation of DBKL to pave way for the Plaintiff and other parties who have stake in DBKL to convert their credits into equity and/or inject further capital into DBKL in an effort to stabilize, sustain and ultimately revive its existence as an institution. The Defendants would not suffer any prejudice if they are compelled to comply fully with the provisions of section 53 (1) of the Act.

6. The application is opposed by the 1st and 2nd Respondents. The 1st Respondent opposes the application vide a replying affidavit sworn by **Adam Mohamed Boru** sworn on **9th October 2015**. In the affidavit Mr. Boru depones that the current application has come too late in the day after the liquidation process of DBKL is already underway, and that in any event the Respondents herein are not obligated by any law to enter into any negotiations with shareholders or creditors of the bank as suggested by the Applicant, and that doing the same would amount to allowing the Plaintiff/Applicant preferential treatment over creditors which would be contrary to the law and may not be in the public good.
7. On their part, the 2nd Respondent opposes the application through Grounds of Opposition dated and filed in court on 8th October 2015, and through an affidavit sworn by **Matu Mugo** and filed in court on **9th October 2015**. The 2nd Respondent opposes the application on the grounds that

the receivership period of 12 months or extension thereof is discretionary depending on the circumstances of each institution, and that the application is filed late in the day when the liquidation process is already underway, and that in any event, under Section 46 of the Kenya Deposit Insurance Act, no injunction can issue against the 1st Defendant once it has assumed control of an institution and that the Plaintiff's remedy lies in damages for the alleged unlawful actions.

PLAINTIFF'S/APPLICANT'S SUBMISSIONS

8. Parties made oral submission before the court. The Applicant's counsel, Mr. Morris Omuga, submitted that the Plaintiff held several bank accounts with ***(DBKL***) holding an approximate amount of **Kshs. 142,000,000/-,** as at **14th August 2015**, in the bank accounts particularized hereunder;

Account Numbe Credit Balance

a. 81199809 Kshs. 4,816,860.67

b. 81199817 US$ 1,130,264.85

Apart from above accounts, there were other banker's cheques and telegraphic transfers totaling an amount of **US$ 125,000.00.**

9. Mr. Omuga submitted that on 14th August 2015, the Applicant learnt through the media that Central Bank of Kenya, the 2nd Defendant herein had placed DBKL under receivership and further that it had appointed Kenya Deposit Insurance Corporation, the 1st Defendant herein as a receiver of DBKL. The Plaintiff had no notice of the intention of the 2nd Defendant to place DBKL under receivership (*pursuant to the provisions of sections 43 (1), 43 (2) and 53 (1) of The Kenya Deposit Insurance Act 2012* prior to that action hence the Plaintiff was shocked with that move. Mr. Omuge submitted that once the 2nd Defendant undertakes its statutory mandate under sections 43 (1) and (2) and 53 (1) of the Act, the normal banking operations of an institution are suspended for a period of 12 months, subject to a further extension of 6 months (if necessary) during which period an evaluation of the affairs of the institution is undertaken before the 1st Defendant can recommend to the 2nd Defendant to subject the institution to the process of liquidation. Counsel submitted that his reading of Section 53 (1) of the Act create the impression that Parliament in crafting the Act intended it to guard against premature liquidation of institutions which could be salvaged and stabilized. In other words the period of 12 to 18 months, provided for under sub-section 53 (1) of the Act was intended to enable the 1st Defendant to undertake full evaluation of the affairs of the institution under receivership to enable it make a reasoned conclusion before recommending liquidation option to the 2nd Defendant. Mr. Omuga then concluded that the 2nd Defendant violated the provisions of Section 53 (1) of the Act when it purported to confer upon the 1st Defendant the liquidation powers provided under section 54 (1) (a) of the Act on 24th August 2015 hardly ten days after commencement of receivership, when the very Act under which it purported to act did not specifically confer upon it powers to act in that manner. Following this alleged unlawful action, the
2nd Defendant has moved with an unusual alacrity and speed, without having undertaken an analysis of the financial status of DBKL, to commence the actual process of liquidating DBKL, and is currently performing the following acts:-

a. *The 1st Defendant has prematurely invited depositors of DBKL to lodge their claims for*

payment of insured deposits pursuant to section 28 (1) of the Act which provides for payment of Kshs. 100,000/-, to depositors who lodge their claims in accordance with the provisions of section 33 of the Act.

b. *The 1st Defendant issued a letter dated 1st September 2015, giving 1 (one) month notices to the Landlords of DBKL of its intention to terminate leases they had with DBKL with effect from 1st September 2015.*

10. The Applicant submitted that it sees malice, ill-will and vested interest in this hurried and ill-advised decision of the Defendants to subject DBKL to such a premature process of liquidation, an action which will automatically subject the Plaintiff to irreparable loss and damage as it would only recover a measly sum of Kshs. 100,000/-, under section 28 of the Act. In the circumstances, the Plaintiff is prepared to support the process of turning around the fortunes of DBKL by having its deposits which are part of the debts of DBKL, converted into equity in a similar way the 2nd Defendant allowed the depositors of **Delphis Bank** (***currently known as Oriental Commercial Bank Limited***), to convert their deposits into equity.
11. Counsel submitted that a similar scenario was implemented at **Uchumi Supermarket Limited**, whose creditors converted their credits into equity which enabled it to recover from receivership and they are currently part of the shareholders of the said company.

12. The Applicant submitted that it is aware that DBKL's shareholders are also prepared to inject further capital into it and additionally have secured a strategic investor who is prepared to have it bailed out of receivership.

13. The Applicant's case is that in as much as its claim is commercial in nature, it is seeking redress from a violation and infringement of it constitutional right within the meaning of ***Article 23 (1) of The Constitution of Kenya 2010,*** and to that extent it is entitled to seek remedies set out in ***Article 23 (3) of The Constitution of Kenya 2010***, consequently, the Applicant prays that the court declares the provisions of Section 46 (1) of the Act unconstitutional, null and void to the extent that they purport to deny a party the right to seek for remedy guaranteed by The Constitution.

14. The Applicant further submitted that the said Section 46 (1) of the Act also contradicts Section 55 (2) of the same Act, which on its part grants an aggrieved party right of access to "***the High Court for orders as appropriate".*** Mr. Onunge submitted that the Applicant seeks conservatory orders under Article 23 of The Constitution and order 40 rules 1 and 2 (CPR), to restrain and to stop the 1st Defendant from undertaking premature and further orders compelling them:-

- to comply fully with section 53 of The Act,
- to create a frame work for willing depositors to convert their deposits into equity,
- to enable the shareholders to eject additional capital into DBKL,
- to enable interested parties to inject capital into DBKL.

THE FIRST DEFENDANT'S/RESPONDENT'S SUBMISSIONS

15. Mr. Ochieng Oduol for the 1st Respondent submitted that the 1st Defendant/Respondent is the only body in Law that can be appointed by the Central Bank of Kenya as Receiver or Liquidator of any deposit taking institution. The 1st Defendant/Respondent was established under an act of parliament namely The Kenya Deposit Insurance Act, 2012. In its preamble the Act stipulates the objectives of the KDIC Act to be to ***"…provide for the establishment of a deposit insurance system and for the receivership and liquidation of deposit taking institutions…"*** These

objectives are restated at section 5(1) of the Act. Section 6 of The KDIC Act stipulates the powers of the 1st Defendant/Respondent while receiving or liquidating a deposit taking institution which include carrying on the institution's business affairs, managing its assets and liabilities in a prudent and acceptable manner. The 1st Respondent's case is that under Section 50(4) of the Act, the 1st Defendant/Respondent has exclusive powers to among other things, conduct the business of the institution to the extent that the 1st Defendant/Respondent or its appointee deems necessary or beneficial to the institution, its depositors or shareholders and in exercise of the stated powers, the 1st Defendant/Respondent shall not be subject to direction or supervision by any other entity, and that even though section 53(1) of the Act stipulates that a receivership shall last for 12 months with an option to extend for a further six months, the Act does not stipulate that deposit taking institution cannot be put under liquidation before the expiry of the first Twelve months.

16. Mr. Ochieng Oduol submitted that DBKL was a problematic institution and was put under Receivership on 14th August 2015 by the Central Bank of Kenya following its inability to comply with mandatory statutory requirements for operating a bank under the Banking Act, Cap 488. The bank was put under Liquidation on 24th August 2015 by the Central Bank of Kenya in accordance with the Provisions of Section 54 of The Deposit Insurance Act, 2012. Prior to that, however, the bank had been the subject of thorough inspection by the Central Bank of Kenya. ***(Annexed and marked "AMB3 (a) & (b)" are copies of letters from the Governor Central Bank of Kenya and the CEO of KDIC addressed to Mr. Zubedi of DBKL).***
17. Counsel submitted that following further examination on the bank , several irregularities were unearthed among them:-

a. ***DBKL was insolvent to the tune of Kshs. 1,307,000,000.00.***
b. ***DBKL's liquidity ratio was 0.5% far below the statutory minimum of 20%.***
c. ***DBKL's capital was way below the statutory minimum of Kshs. 1,000,000,000.00.***
d. ***The Board of the DBK comprised of three (3) Directors contrary to the Banking Act which requires a minimum of 5 board members.***
e. ***Cash balances were grossly overstated.***
f. ***Contingent liabilities including guarantees and letters of credit (LC) amounting to over 3 billion shillings were not disclosed in the bank books.***
g. ***The DBKL held a non-performing loan portfolio of Kshs. 4,163,000,000.00.***
h. ***There were incidents of parallel banking transactions not forming part of the official records of DBKL's declared transactions.***
i. ***Several insider lending transactions were noted comprising overdrafts, guarantees and loans advanced without securities to the Defendants or to companies associated with the Mr. Zubedi which transactions had not been approved by the Bank shareholders.***
j. ***The DBKL had failed to honour customer instructions to remit monies deposited by such customers, to third parties involving a sum in excess of Kshs. 41,000,000.00.***
k. ***DBKL had failed to pay a sum of Kshs. 48,000,000.00 due to Bank of Africa Limited, following a forex transaction.***
l. ***There were 7,743 deposit accounts with outstanding balances in excess of Kshs. 1,355,000,000.00.***
m. ***The DBKL was facing yet to be determined litigation at the High Court of Kenya at Milimani, over a claim of SAR 42,000,000.00 allegedly due to M/s Universal Metal Coating Company Limited, following alleged dishonoured Letter of Credit issued by The DBKL, that is to say High Court Civil Case No. 278 of 2014***
n. ***The investigations also established that the Mr. Zubedi contrary to the provisions of the Banking Act Cap 488, held both Executive and non Executive directorship of the board***

and that he had absolute control over the operations and affairs of The Bank.

o. ***Among the companies associated with Mr. Zubedi and which were beneficiaries of large questionable loans and other forms of credit were M/s Africa Energy Limited, Suleiman Enterprises Company, Kamp General Engineering Company, Kemu Salt Parkers Production Company and Maestro Properties Company***

p. ***Mr. Hassan Ahmed Abdul Hafedi Zubedi (Mr. Zubedi) who was at all material times the Chairman of Board of the Bank, held over 344 title deeds in his safe within the Bank premises for various properties across the Republic of Kenya some of which belonged to the Mr. Zubedi and/or his related companies.***

18. The 1st Defendant/Respondent then in an apparent deviation from the application and the Applicant, directed its displeasure in the person of Hassan Zubedi, the Chairman of DBKL, and spent considerable submission on alleged criminal or negligent activities of Mr. Zubedi, and criminal investigations currently allegedly being carried out on Mr. Zubedi by the Anti Bank Fraud and Criminal Department.

19. Mr. Ochieng Oduol submitted that Mr. Zubedi had so mismanaged DBKL to the extent that the bank became synonymous with him, and that in the process of investigations, 344 titles were found with Mr. Zubedi, and that save for the titles recovered from the offices of the Mr. Zubedi and other board members there are hardly any other assets of DBKL sufficient to safeguard the depositors or creditors interests.

20. Counsel submitted that the transgressions by DBKL were **first** captured in an inspection report of the 2nd Defendant/Respondent dated **31st December 2011** which detailed similar or identical irregularities, fraud and blatant breach of the law by DBKL and which shows that the DBKL has been ailing for over five years and no effort can resuscitate it. That among the main findings in the 2nd Defendant/Respondent report abovementioned were:-

a. ***The performance of DBKL has stagnated over the years mainly as a result of poor corporate governance and failure by the Board and senior management to give clear strategic direction with a view to turning around the institution.***

b. ***DBKL's core capital at Kshs. 639 Million was below the statutory minimum requirement of Kshs. 700 Million.***

c. ***DBKL board had not devised a plan to raise additional capital to meet the current capital requirement or a capital build up strategy to meet the statutory capital level of Kshs. 1 billion required by December 31st 2012.***

d. ***DBKL was involved in tenancy dispute with the land lord over the premises where the Head Office is based. The case over the premises located at ICEA building has been pending in court since 2003 and the Board had not put in place contingency plans in the event that the case was ruled against the institution.***

e. ***DBKL is involved in financing Letters of Credit (LCs) some of which may not have been booked in the bank's records, as evidence by numerous complaints from aggrieved parties.***

f. ***The level of business risks facing the institution was noted to be high.***

g. ***DBKL had not established a comprehensive risk management framework and most of the key functional positions including position of the Chief Executive Officer were vacant.***

21. Counsel submitted that the Report also exposed a litany of irregularities among them :-

a. ***Capital inadequacy: the institution's core capital of Kshs.639 Million was below the***

minimum requirement of Kshs.700 Million.

b. ***<u>Non-performing loans</u>: constituted 35.6% of credit portfolio contrary to industry average of between 8.7% and 4.4%.***
c. ***<u>Non compliance with Banking Act and Prudential Guidelines:</u> The bank extended credit to board members, companies associated with board members and business connections without adequate appraisal, exceeded limits for single borrower of 25%, granted unsecured credit to companies associated with the board members, maintained inadequate provision for bad and doubtful debts, employed unqualified or unsuitable persons to ran the bank credit functions, failed to supply reports on suspicious transactions as required.***
d. ***The bank risk rating was overall too high and no effort was being made to put in place systems to remedy the situation as a result the banks market share continued to deteriorate and its ranking dropped to 43 out of 44 as of 31st December 2011.***
e. ***There was replete gross violation of the Banking Act forming four pages of the aforementioned report.***

22. Mr. Oduol submitted further that the aforementioned report generally drew a very bleak picture of DBKL and even though the report made several recommendations on revamping the banks corporate governance, adherence to the law, reduction on non-performing loans, adjustment on its liquidity among others, it is apparent from the 1st Defendant/Respondent's report of 14th August 2015 that the situation was never remedied but deteriorated even further making the proposal by the Plaintiff/Applicant herein for "rescue package" not only untenable but also ridiculous. Counsel submitted that the orders sought by the Plaintiff/Applicant would amount to a breach of the provisions of Section 51(1) of the Act in that the High Court would be acting in in a executory role and or executing a statutory duty that is vested exclusively in a statutory body, *to wit*, 1st Defendant/Respondent. Neither the 1st Defendant/Respondent nor the 2nd Defendant/Respondent is obligated by any law to enter into any negotiations to revive the bank. To allow the Application herein would amount to allowing the Plaintiff/Applicant preferential advantage over other creditors which would be contrary to the provisions of the law and may not be in the public good. Further, counsel submitted that Section 46(1) (a) provides that no injunction shall be brought or any other action or civil proceedings commenced against the 1st Defendant/Respondent or an appointed person. Counsel submitted that the orders sought are futile as the Liquidation of DBKL has already been Gazetted and a Liquidation Agent has already issued Notices to depositors under section 28 of The KDI Act and as of 7th October 2015 the 1st Defendant/Respondent had paid **Kshs. 28.7 Million** to depositors. Counsel submitted that although the Liquidation was Gazetted on 24th August 2015, the Applicant came to court on 2nd October 2015, **forty (40) days** later, which demonstrates the suit is frivolous, lacks seriousness and is intended to annoy and frustrate the Liquidator in the performance of its duties. The 1st Respondent submitted that according to the assessment of Kenya Deposit Insurance Corporation, DBKL requires not less than **Kshs. 5 billion** to be revived. This sum would provide for minimum capital requirements, contingent liability exposure, expected deposit withdrawals and other operational costs, an exercise which is untenable under the prevailing circumstances.

23. The 1st Respondent's case is that depositors with balances of less than **Kshs. 100,000/=** comprise 90% of all the depositors at the Bank. Among those who have lodged their claim is the Plaintiff/Applicant and the first interested party and payments have already been processed. Further out of the total number of depositors of DBKL numbering 7,743 accounts 7,002 accounts had balances within the insured amount and therefore the 1st Defendant/Respondent is in the process of reimbursing these depositors in full, making it 90% of the total depositors claims.
24. The Respondent's case is that the Plaintiff/Applicant cannot seek to rely on constitutional

provisions to redress a dispute arising out of a commercial transaction where the parliament has clearly provided a law to govern such legal issues.

THE SECOND DEFENDANT'S/RESPONDENT SUBMISSIONS

25. M/s Elizabeth Ng'onde counsel for the 2nd Respondent submitted that the 1st Defendant was appointed as the receiver/ liquidator of DBKL pursuant to the provisions of the Kenya Deposit Insurance Act. The said decision was made after the Central Bank took the necessary steps under the Banking Act and the Prudential Guidelines to enable the Bank restore its business normalcy and to cease violating the law but these efforts were not successful. Counsel submitted that strong grounds existed for placing the Bank under receivership and subsequently under liquidation. Some of the grounds include:-

(i) The capital of the Bank was far below the K.Shs. 1 Billion statutory minimum;

(ii) The liquidity ratio was 0.5% which percentage was far below the statutory minimum of 20% of the total deposit liabilities;

(iii) The Bank did not have a board as it only had three (3) directors against the minimum requirement of five (5) directors;

(iv) The Bank was insolvent to the tune of K.Shs. 1.3 Billion;

(v) The cash balances were grossly overstated and contingent liabilities, including guarantees and letters of credit amounting to over K.Shs. 3 billion were not disclosed in the books of the bank;

(vi) The Bank had a huge non –performing loan portfolio;

(vii) The Bank failed to pay K.Shs. 48 Million due to Bank of Africa following a forex deal;

(viii) A number of court cases were filed and are still pending against the Bank for failing to honour its financial obligations; and,

(ix) The Bank could not meet its financial obligations as they fell due.

26. M/s Ng'onde further submitted that the Application is too late in the day as the liquidation process is at an advanced stage. The Applicant had sufficient time to file suit immediately the Bank was placed under receivership but failed to act with speed. The orders sought have already been overtaken by events as the process for paying the protected depositors has already started, and that in any event it is only the 1st Defendant who is in a position to recommend revival of the Bank.
27. Counsel submitted that the necessary assessment was made by the 1st Defendant and it concluded that liquidation was the best option. The Plaintiff/ Applicant does not have knowledge of the facts leading to receivership and the liquidation and is therefore not in a position to recommend any solution contrary to the 1st Defendant's honest and professional assessment and/or judgment. Further even if the deposits are converted into equity as suggested by the Applicant, the same will not be sufficient to raise the necessary capital and liquidity to support the banking business of the Bank as the bank does not have sufficient assets to safeguard depositors and creditors interests. Counsel submitted that the 2nd Defendant has both

constitutional and statutory duty to protect the members of the public, particularly depositors and creditors of the Bank. The liquidation process is intended to achieve that purpose. In any event, under section 46 of Kenya Deposit Insurance Act, the conservatory/injunctive orders cannot issue against the 1st Defendant once it has assumed control of an institution and the Plaintiff's remedy lies in damages.

28. Counsel further submitted that under Section 53 of the Kenya Deposit Insurance Act, it is not mandatory for an institution to be placed under receivership for a period of one (1) year. The 1st Defendant has the power to recommend that an institution under receivership be liquidated. The period for such recommendation to the 2nd Defendant is not pre-determined in law. The 2nd Respondent's case is that the appointment of the 1st Defendant as the liquidator was within the law and pursuant to a report and recommendation by the 1st Defendant while acting as the receiver of the Bank.

APPLICANT'S REPLY TO SUBMISSIONS

29. In reply to the submissions made by the Respondents, Mr. Omuga further submitted that the Applicant's attention has been drawn to a new development in the Banking Industry since the application was filed, that is, the placing into receivership of Imperial Bank Limited **IBL** by the 2nd Defendant and appointment of the 1st Defendant as its receiver. Counsel submitted that according to the press release issued by the 2nd Defendant on 13th October 2015, it had exercised the powers conferred upon it by the provisions of sections 34 (2) (b) of the Banking Act (Cap 488) and sections 43 and 53 (1) of the Kenya Deposit Insurance Act 2012, in placing IBL under receivership. Counsel submitted that the provisions of Section 34 of the Banking Act are remedial in nature since they are intended to transfer managerial functions from the board of directors of a troubled institution to an appointee of the 2nd Defendant who according to sections 43 and 53 (1) of the Act is the 1st Defendant. Counsel submitted that the remedial measures adopted by the 2nd Defendant with respect to IBL is what the Plaintiff is praying for in this case with respect to DBKL. Counsel submitted that on 14th October 2015, the Governor of the 2nd Defendant released what he termed as ***"Additional information on Imperial Bank Ltd (in receivership***)", in which among other things he stated that IBL represented 1.8% of the banking business and further that the receivership was intended towards restoration of safely and soundness of IBL. (that communication was annexed to the Supplementary Affidavit of the Applicant as **ANNEXURE "C"**.

30. From that statement, counsel submitted that:-

   a. ***IBL had a higher level of insolvency (what is in the public domain is an amount of Kshs. 70 billion), as opposed to DBKL whose total deposits were in the range of Kshs. 1.3 billion.***
   b. ***IBL is being managed for the benefit of depositors and creditors, as opposed to DBKL, which is being liquidated in a hurry for the benefit of employees of the 1st Defendant to the detriment of its depositors and creditors.***

31. Mr. Omuga in his submission questioned the apparent double standards by the 2nd Defendant, who in his view is abusing the statutory discretion by applying the law selectively, opting to liquidate a bank with lower insolvency level of Kshs.1.3 billion only, and making every attempt to revive another with unimaginable insolvency level of **Kshs. 70 billion.**
32. Mr. Omuga also submitted that further discrimination against the depositors and creditors of DBKL emerges from the Gazette Notice issued by the 1st Defendant on 13th October 2015, with respect to depositors of IBL where it stated at ***clause (b)*****,** that the deposits with IBL would earn

interest at such rates to be determined by the 2nd Defendant during the moratorium period, which provision is not applicable to depositors of DBKL. (That Notice was marked as **ANNEXURE "D"** to the Applicant's affidavit).

33. In this regard, it was the Applicant's case that the 2nd Defendant has totally failed the Applicant and other depositors of DBKL and Kenyan public in general if the averments in the affidavits sworn by **Messrs Mugo** and **Boru** are to be believed. This is the summary of what they have deponed to on oath:-

MUGO

a. from the year 2012, DBKL has consistently violated the provisions of the Banking Act and prudential guidelines.
b. its liquidity ratio was far below the minimum requirement of 20% of the total deposits/insolvency.
c. it had a huge non-performing loan portfolio.

BORU

a. the 344 title deeds seized from the office of the Chairman of DBKL were not charged to DBKL.
b. the titles could have been held for the benefit of DBK.
c. there are hardly other assets of DBKL sufficient to safeguard interests of the depositors or creditors.
d. the transgressions were first captured in an inspection report of DBKL dated 31st December 2011.

34. The Applicant's case, pursuant to the above revelations is that the 2nd Defendant seriously failed in discharge of its statutory mandate outlined in Part VII of the Banking Act, and the Applicant does not accept the proposition to the effect that it should be made to suffer for the failure of the 2nd Defendant to discharge its statutory mandate.

35. Mr. Omuga also submitted that Mr. Hassan Zuebdi in his Replying affidavit sworn on 12th October 2015 had controverted the allegations of indebtedness made against DBKL by the Defendants, and had claimed that the 2nd Defendant frustrated DBKL's attempts to appoint additional directors, which claim the Respondents did not deny Mr. Hassan had also deponed that majority of the depositors of DBKL who constituted over 93% had Kshs. 100,000/-, and below leaving just about 7% holding over Kshs. 1 billion, which if converted into equity would reduce DBKL's indebtedness substantially by at least Kshs. 1 billion. Mr. Hassan also depend that he had given the 2nd Defendant a proposal by Sovereign Financial Holdings to inject an amount of US$ 21,500,000 (equivalent approximately to Kshs. 2,214,500,000/-, into DBKL and acquire about 95% of its holding and that this proposal has not been challenged.

36. Counsel submitted that if the proposed injection of **Kshs. 2,214,500,000/-,** is allowed by the Defendants and the large depositors permitted to convert their deposits into equity, the net effect would wipe out DBKL's insolvency and leave it with a credit balance of over Kshs. 3 billion instead.

37. Counsel further submitted that the Defendants have also withheld from the Court information about the inventory or portfolio of performing loans and the values of securities held by DBKL as at the 14th August 2015.
38. The Applicant's case is that it is true it filled and submitted compensation form and the 1st Defendant speedily transferred to its account **Kshs. 100,000/-,** immediately it realised that the

Plaintiff had filed this suit, however, even after paying the Plaintiff the said insured sum of **Kshs. 100,000/-,** under section 28 of the Act, the Plaintiff still remains the second largest depositor with an amount of **Kshs. 142,526,240.43,** as per annexure marked **AMB "5"** to the affidavit of **ADAM MOHAMED BORU** at page 57 (***top 20 depositors***), the Plaintiff had a credit balance of **Kshs. 142, 626,240.43**, which after deducting the said **Kshs. 100,000/-,** leaves **Kshs. 142,526,240.43.**

39. Mr. Omuga further submitted that the insured sum of Kshs.100,000/= which is payable to depositors under Section 28 of the Act is not supposed to come from the proceeds of the liquidation, but rather from the funds already held by the 2nd Defendant for that purpose. So there is really no reason for the 1st Defendant to suggest that the process of liquidation is already underway, and that it is too late in the day to grant the orders sought herein.
40. Counsel submitted that the mere fact that the 1st Defendant has closed branches of DBKL and transferred its operations to its offices and even paid some depositors the insured amounts does not of itself mean that liquidation cannot be stopped to pave way for its management under **section 34 of the Banking Act and section 50 of the Kenya Deposit Insurance Act 2012,** since the securities which were placed with DBKL are still in place and the evaluation of the debtors of DBKL has not been undertaken.

41. Mr. Omuga submitted that the purported attempt to summarily liquidate DBKL is intended to enrich employees of the 1st Defendant who have corruptly and fraudulently started releasing security documents to the debtors of DBKL in clear violation of the law and their actions are self serving and not for the benefit of depositors and creditors.
42. For the foregoing reasons, the Applicant prays for conservatory orders to stop the Defendants from undertaking the alleged haphazard and disorderly disposal of the assets of DBKL and instead restructure it pursuant to the provisions of section 34 of the Banking Act and section 50 of the Kenya Deposit Insurance Act.

ANALYSIS AND DETERMINATION

43. I have carefully considered the submissions of the parties to the application. I have also carefully considered the application in its entirety. The following issues appear to me to be crucial for the determination of this application:-
    i. ***Whether the applicant as a depositor has a right to come to court to seek the orders sought, and whether Section 46 (1) (a) of KDI Act is unconditional.***
    ii. ***Whether the 1st and 2nd Respondents have pre-maturely liquidated the DBKL.***
    iii. ***Whether the Central Bank of Kenya has exercised its supervisory jurisdiction over the DBKL prudently under Part VII of the Banking Act, Chaper 488 Laws of Kenya.***
    iv. ***Whether the liquidation process is already too far underway, and whether the application herein has come too late in the day.***
    v. ***Whether the DBKL should be given a chance to be revived as proposed by the Applicant and the other shareholders.***
44. To address issue number one, above, as to whether the Applicant as a depositor has the right to come to this court to seek the orders sought, it is to be noted that the conservatory orders being sought herein are well founded under Order 40 Rules 1 and 2 of the Civil Procedure Rules, and therefore nothing stops the Applicant from seeking redress under that order. However, Mr. Ochieng Oduol submitted that the Applicant is barred under Section 46 (1) of the Kenya Deposit Insurance (KDI) Act, 2012. The Section states as follows:-

"Section 46 (1) (a)

(1) Where the Corporation or the appointed person, as the case may be, has assumed control of an institution under section 44***(2)(b)—***

(a) "no injunction may be brought or any other action or civil proceeding commenced against the Corporation or the appointed person in respect of the assumption of control."

Under Section 46 (2) an aggrieved person may only have remedy in damages. The Section reads:-

"(2) Subsection (1) shall not prevent any person who sustains losses from any action of the Corporation or the appointed person from instituting an action for damages for the losses suffered by such person."

45. Mr. Omuga for the Applicant controverted the above position by submitting that the right to to access court is fundamental and is guaranteed under Articles 23 (1) and (3) of the Constitution, and to the extent that the KDI Act at Section 46 (1) (a) outlaws access to the court, the said Section 46 (1) (a) is unconstitutional and should be declared so. Article 23 (1) of the Constitution states as follows:-

Article 23 (1)

"(1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights."

Under Article 23 (3):-

"(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including––

(a) a declaration of rights;

(b) an injunction;

(c) a conservatory order;

(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24."

46. The issue then that arises is whether the Plaintiff's right to come to this court, being a commercial right, is also a fundamental right protected under Article 23. Under Article 24 some of the fundamental rights can be limited. However, a right to access the court is so fundamental that it can only be limited expressly and not by implication. So, the issue is whether Section 46 (1) (a) of the KDI Act 2012, unconstitutional. I do not think so. That is so because the Section is couched in a discretionary manner. It merely states that:-

"no injunction may be brought or any other action or civil proceeding commenced . . . "

The discretionary language employed in that Section means that the applicability of that section remains in the interpretation of the court, and will depend on the circumstances of each case. In this case, however, it is my finding that to interpret that section in a manner which denies the Applicant his

economic or other rights, especially the right to access the court, is unconstitutional, and, limited to these proceedings, I herewith declare Section 46 (1) of the KDI Act 2012 unconstitutional and invalid under Article 23 (1) and 23 (3) (d) of the Constitution in so far as this particular application is concerned. It is therefore the finding of this court that the Applicant has the right to come to this court, and to seek the orders sought in this application notwithstanding Section 46 (1) (a) of the KDI Act 2012.

47. Besides, and in addition to the forgoing, sections 51 (2) and 55 (2) expressly allow recause to court by any aggrieved party. This sections state:-

“Any party aggrieved by the exercise of the powers may apply to the High Court for orders as appropriate”

48. The second issue I raised is whether the 1st and 2nd Respondents are pre-maturely liquidating the DBKL. Under Section 53 (1) of the Act the appointment of a reciever shall be for a period not exceeding twelve months, and may be extended by a further six months. It is the contention of the Applicants that the DBKL liquidation is being rushed to the detriment of the bank, shareholders and depositors, and that there is ill will, bad faith and malice in the act. This perception is informed by the fact that the bank was put into receivership on 14th August 2015, and within 10 days, into liquidation. The question which brings in the doubt is why the hurry to put into liquidation DBKL within 10 days when the same may be done within 18 months" I have considered counsel submissions on this issue. What is to be noted is that the decision to liquidate the bank is purely discretional, and the bank can do that within the said 12 months, with an extended further period of 6 months. However, the action must be one which must withstand scrutiny. A bank is a very important financial institution, and decisions concerning its operations should not appear to be made whimsically. Those decisions must be seen to be based on some policy principles which can be stated and dependent upon. This policy principle, when stated, will not only give assurance to the entity to be liquidated, its shareholders and depositors, but more important to the banking public. An exercise of discretion, which appears shrouded in mystery, prejudice or bad faith will be faulted by a court in which the exercise of such discretion is questioned. The question to be asked by a rational banker is this; the bank has been in business for many years in Kenya. At what stage did the 2nd Respondent establish that the bank was no longer a bank, such that within 10 days of the bank being put in receivership, it is being liquidated" The impression one gets is that the Central Bank of Kenya had all along known that Dubai bank was seriously ailing, and risking the depositors interest, but did nothing to stop the bank from the ailing and bleeding. By the time the bank was put into receivership, the Central Bank and the Liquidator already knew their next step. The 10 days was meant to deceive prudent bankers and the public. The truth of the matter is that there is no rational reason put forth by the Respondents as to why the bank should fall into liquidation within 10 days of receivership except to believe that this was a decision made well before the bank was put into receivership. If that is the case, which i think it is, then the apparent rush to liquidate the bank is made in bad faith, is malicious, and unreasonable and meant to injure the depositors including the Applicant. While it is not the province of the court to interfere with discretion properly exercised, a wrong or unreasonable exercise of discretion will always be questioned by court. An example is found in the case of **Associated Provincial Picture Houses – Vs Wednesbury Corporation** (supra), Lord M. R. Greene, in his leading judgement stated:-

“When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those

principles the discretion is an absolute one and cannot be questioned in any court of law. What then are those principles, they are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion they must have regard to those matters."

"It is evident from the above that the exercise of discretion conferred on an executive authority, can only be interfered with by the court in limited situations, where the court is satisfied that the discretion has not been properly exercised either because relevant factors have not been taken into account, or irrelevant factors have been taken into account, or the discretion is exercised in an unreasonable manner resulting in abuse of power or unfair treatment. This means that where the exercise of discretion is challenged, the court does not sit as an appellate court considering the merit of the decision, arrived at through the exercise of the discretion, but it considers the discretionary power as provided in the statute, the process of applying the discretion, and matters taken into account in the exercise of that discretion, in order to determine whether the discretion has been properly exercised. That is not tantamount to interfering with the exercise of the discretion but is simply ensuring that the discretion is neither abused nor discretionary power exceeded but exercised fairly."

49. It is the finding of this court that the decision to liquidate the bank 10 days after the same was put in receivership shows that either the Respondents all along knew that the bank was ailing and bleeding financially, but decided to keep this information from the depositors and from the public at large, or that the said 10 days was too short a time to study the problems besetting the bank and make such profound way forward when the Respondents had upto 18 months to reach such decision. Whatever, the case may be, I am not convinced that the decision to liquidate the bank within 10 days of receivership was a discretion the exercise of which avoids scrutiny. It is the finding of this court that the DBKL is being hurriedly and probably also pre-maturely liquidated by the 1st and 2nd Respondents.
50. The third issue I raised is whether the Central Bank of Kenya (***hereinafter called "the CBK"***) has exercised its supervisory power over DBKL prudently, and in the manner and calling of its responsibilities under Part VII of the Banking Act. In regard to this I have noted the contents of the replying affidavit sworn by Adam Mohamed Boru on behalf of the 1st Respondent, and that sworn by Matu Mugo for the 2nd Respondent. I have also noted and considered the submission of Mr. Ochieng Oduol on the issue. There is no doubt that the Respondents have laid bare before this court the alleged shortcomings of the DBKL. The ills and problems besetting DBKL are documented at paragraphs 16, 19 and 24 of this ruling. They range from allegations of insolvency to that of negligence, fraud, and criminality alleged against the directors of the bank. I will not restate them in this paragraph. However, one thing is fairly clear. If the CBK and the KDIC rely on these allegations, as they do, then someone, or this court, must seriously call into question the CBK's exercise of its supervisory powers under Part VII of the Banking Act. The CBK states that the ills and problems bedevilling DBKL started in the year 2011 when the DBKL rating allegedly dropped to 43 out of 44 as of 31st December 2011. CBK has all this time known that DBKL had serious problems. However, it chose to cover or gloss over those problems and continued to pamper the bank when it had serious responsibility to the depositors and to the public at large. If for a moment this court is to believe the reports attached to the replying affidavits, and the correspondences between the CBK and the DBKL, then this court must make an unpleasant verdict concerning the CBK's exercise of its supervisory powers. It must be noted that the exercise of supervisory powers under Part VII of the Banking Act by the CBK is not only meant to keep a check on the banking institutions. It is also meant to protect the public from mischievous financial institutions. CBK cannot purport to say that the ills and problem bedevilling

DBKL as massive as they are alleged, came to them by surprise. If the CBK had done due diligence on the DBKL, these proceedings would never had been necessary, as an emergency whistle would have been blown more than two years earlier. It is instructive to look at some of the CBK 's responsibilities under Part VII of the Banking Act. Section 32 clothes the CBK with inspection and supervisory powers of the financial institutions. Section 32 A clothes the CBK with powers of vetting officials and carrying out assessment of the professional and moral suitability of the persons managing, or controlling financial institutions. If these powers were prudently exercised, the CBK's allegations that the DBKL was mismanaged and its finances siphoned away would not have arisen. Even branding Mr. Hassan Zubedi as a thief and criminal would not have been necessary in that light. Section 33 clothes the Central Bank with powers to advise and direct operations of banks in terms of management, officers and appointment of suitable persons to manage the bank. Under Section 33A, 34 and 34A, the CBK is clothed with powers to audit and inspect reports and to restrict, suspend or prohibit the payment of dividends by any financial institution, and to direct the suspension or removal of any officer involved in such conduct from the service of the institution. These Sections further clothe the CBK with powers to intervene in management of any financial institution which fails to meet any financial obligation when the same falls due, including any depositor. These Sections also clothe the CBK with powers to intervene in the management of any financial institution which is significantly undercapitalised. It is to be noted further that under Section 34A a financial institution which experiences any or all or a combination of above problems is first of all provided with an option of Voluntary Liquidation. This presupposes the existence of a prudent overseer, who is in constant touch with the ills bedevilling the financial institution. And even then, the CBK and the ailing financial institution are deemed to be in a mutual, and beneficial communication relationship. Under these kind of arrangements the ailing financial institution is able to recommend to the CBK, or the CBK may also make the recommendation, for voluntary liquidation. That is the procedure envisaged under the law. These supervisory powers are not merely meant for the good of the ailing financial institution. They are also meant to safeguard the interests of the depositors, the general banking public, and the country's economy. In other words, the CBK is the guardian of the country's economy. It is further to be noted that under Section 35, the liquidation of the ailing financial institution by the CBK is provided for as the last intervention scheme after all else have failed. Liquidation is a point of no return, and will only be necessary when all else has failed. That is indeed why the period of receivership provided under Section 53 (1) of upto 18 months is necessary. In the event that a financial institution can still be saved, upto 18 months are available to study any other options before a financial institution can be liquidated. The reason why I have considered the aforegoing provisions of the Banking Act is twofold in this matter.

51. Firstly, the intention is to show that the Respondents, herein, were in unexplained hurry to liquidate DBKL, a decision to liquidate coming merely 10 days after the institution was placed under receivership. This, despite the fact that the CBK is deemed to have been aware of the ailing bank. In resorting to this hurried decision to liquidate DBKL, CBK is in my view attempting to escape scrutiny over its supervisory responsibilities under Part VII of the Banking Act, and to blame DBKL for its alleged ills which the CBK ought to have discover two to three years earlier.
52. The second intention why I have looked at the said Sections of the Banking Act is so that it becomes clear who is ultimately intended to be protected by the CBK's supervisory powers. This is important because the application under consideration is not brought by DBKL but by a depositor who correctly claims that the CBK has failed it by imprudent or non exercise of CBK's supervisory powers aforesaid. In this regard this court has noted that the response to the application by the Respondents mainly attack either DBKL or its shareholders including Mr. Hassan Zubedi. Little attempt has been made to challenge the Applicant who is a depositor in the bank with alleged deposit amounting to over Kshs.14,2,000,000/=. There is no rebuttal to the

allegation by the Applicant that indeed he has deposit amounting to the said Kshs.142,000,000/= or indeed of any other amount. The Applicant, as a depositor, was entitled to benefit from CBK's supervisory powers above said, and it has been let down by the CBK. It is now the Applicant's plea that being a lead depositor, the Applicant be allowed, together with other depositors who are interested, to convert its deposits into equity with the eventual aim of reviving the bank. This position has been supported by the interested parties who have since joined these proceedings. Indeed Hassan Zubedi in his replying affidavit sworn on 12th October 2015 depeond that he had given the 2nd Defendant a proposal by **Sovereign Financial Holdings** to inject an amount of approximately 2,221,500,000/= in the DBKL and then acquire part of its shareholding and that the proposal has not even been considered. Yet, as a I have shown herein before, the CBK is obligated by law to consider available options including voluntary liquidation before resorting to liquidation by the CBK. The Applicant, as a depositor with DBKL, is entitled to believe, and to have an assurance of mind, and the peace that accompanies such an assurance, that the CBK would prudently exercise its supervisory powers under the law is in order to protect the Applicant from rouge banks. The 2nd Respondent has in my finding failed to challenge the Applicant's application, and has not explained away its failure to protect the Applicant. Therefore, when the Applicant seeks what may then amount to a 'self-help' procedure to help itself by proposing to turn its deposits into equity with the ultimate intention to return the bank into business, the 2nd Respondent objects to the same. However, the object of the said objection is not even the Applicant. The objection is then addressed towards DBKL and shareholders. In my finding, this is not proper. The CBK must acknowledge that it has tremendous powers to save the depositors and the public from rouge banks, and when an Applicant proposes what would amount to a 'self-help procedure, the least the CBK should do is to consider the viability of such a proposal, and not just to sit pretty and ignore the same. Pursuant to the foregoing paragraphs of this Ruling, it is the finding of this court that the Central Bank of Kenya did not prudently exercise its supervisory powers under Part VII of the Banking Act, and that failure occasioned the loss now being suffered by the Applicant, and that the Applicant is entitled to any prudent measures that may secure its deposits and revive the DBKL, if that is possible. It is also this court's finding that the Respondents have failed to respond to the Applicant's application, but have instead chosen to discredit DBKL and Mr. Hassan Zubedi, who are not Applicants in this matter.

53. The fourth issue is whether the liquidation process is already too far underway, and whether the application herein has come too late in the day. To answer this, it is on record, and it is agreed by both sides to this application, that a few depositors have already taken up their insured portion of the deposit emoting to Kshs.100,000/=. A large section of the depositors are yet to take their insured amount. In my view, the fact that a few people have accepted their insured sums does not violate the Applicant's application. This also applies to the submission that leases have been terminated and employees sacked. Those are contractual obligations which can be reconstituted, either with the same people or with new parties. These are not allegations which can stop this court from allowing the application. In respect to the same allegations, it is noted that most other property of DBKL are either real properly or motor vehicles. Attention of this court was drawn to the allegation by the Respondents that the DBKL is insolvent and has no property to be liquidated. The Applicant also drew the attention of the court to an advertised sale schedule for 20th November 2015 of some motor vehicles belonging go the DBKL. That is still to take place. So the submission that the liquidation process has proceeded too far to be stopped is incorrect, as is the allegation that the Applicant came to court too late in the day.
54. The last issue I turn to is whether the DBKL should be given a chance to be revived as proposed by the Applicant and other shareholders. In answer to this issue, and if the Respondent's record of ills and dilapidation existing at DBKL is to be believed, then it appears the situation is beyond remedy. However, that is the story as told by the 2nd Respondent who, as I have found out, has

failed to prudently exercise its supervisory powers, and whose indictment of the DBKL appears meant to explain the apparent hurry to liquidate the bank. In my view, the Applicant, together with other Interested Parties, should be given an opportunity to explain their self help theory. In particular, the proposal by **Sovereign Financial Holdings** to inject Kshs.2,214,500,000/= into DBKL should be considered by the Respondents. In any event, the proposed funds to be injected do not belong to the Respondents. It appears to be the generosity of a third party, seeking to help the desperate depositors in DBKL. I am not sure the said proposal to inject fund sis viable, or whether it is genuine. But I believe that in the present circumstances, it is an option worth considering, and evaluating.

55. In the upshot, the Notice of Motion application by the Plaintiff dated 2nd October 2015 is allowed in the following terms:-
    i. ***The Receivership placed over the Dubai Bank Kenya Limed (DBKL) shall remain in force.***
    ii. ***The Liquidation of DBKL, currently underway, is herewith suspended by conservatory and injunctive orders of this court for a period of sixty (60) days from today.***
    iii. ***During the said period of 60 days stated in (ii) above, the Respondents shall take steps, and shall fully consider the proposal by M/s Sovereign Financial Holdings to inject Kshs.2,214,500,000/= or thereabouts into DBKL, together with any other proposals by the depositors or other interested parties herein, and report to this court about the viability of these proposals in an effort to revive the DBKL.***
    iv. ***By a document to be filed in this cause and served upon the Respondents herein within ten (10) days from today, DBKL through its Chief Manager Hassan Zubedi, shall make a full, frank and total disclosure of all the properties and assets of DBKL be it land title, money or otherwise, and whether in Kenya or outside Kenya and in whose possession or custody.***
    v. ***In the intervening period, either party shall be at liberty to apply for any or further orders from this court.***
    vi. ***Costs shall be for the Applicant.***

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 18th DAY OF NOVEMBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Omuga for the Plaintiff

Mr. Ochieng Oduor for the 1st Defendant

M/s Ngundu for the 2nd Defendant.

Mr. Nzioka for the Interested Party.

Teresia – Court Clerk