

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
HCCC NO. OF 2017
MULTI -TRACK

CHASE BANK LIMITED (IN RECEIVERSHIP).....PLAINTIFF

-VERSUS-

ZAFRULLAH KHAN.....1ST DEFENDANT
DUNCAN KABUI.....2ND DEFENDANT
MAKARIOSAGUMBI.....3RD DEFENDANT
JAMES MWAURA.....4TH DEFENDANT
RIVERSIDE MEWS INVESTMENTS LIMITED.....5TH DEFENDANT
RINASCIMENTO GLOBAL LIMITED.....6TH DEFENDANT
GENGHIS CAPITAL LIMITED.....7TH DEFENDANT
KEN OBIMBO.....8TH DEFENDANT
DANIEL MAVINDU.....9TH DEFENDANT
ALI CHEEMA.....10TH DEFENDANT
RINASCIMENTO PROPERTIES LIMITED.....11TH DEFENDANT
NINE FIFTY LIMITED.....12TH DEFENDANT
RIVERSIDE MEWS LIMITED.....13TH DEFENDANT
MATHATANI LIMITED.....14TH DEFENDANT
THE LIGHTHOUSE PROPERTY COMPANY LIMITED.....15TH DEFENDANT
BOULEVARD PROPERTIES LIMITED.....16TH DEFENDANT
FRIENDS PROPERTY HOLDINGS LIMITED.....17TH DEFENDANT
SEVEN FORTY INVESTMENTS LIMITED.....18TH DEFENDANT
ANTHONY F GROSS.....19TH DEFENDANT
RUTH MUTHONI.....20TH DEFENDANT

PLAINT

1. The Plaintiff is a limited liability company duly incorporated and registered in

Kenya under the Companies Act having its registered offices in Nairobi and was carrying on banking business in Kenya as a duly licensed Bank in accordance with the provisions of the Banking Act (Cap.488 of the Laws of Kenya) until it was placed under receivership on 7th April 2016, and whose address for service for purposes of this suit is care of **Amolo& Gacoka Advocates, 41 Grevillea Grove, Kyuna, P.O. Box 53319-00200 Nairobi.**

2. The 1st Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya (Service of summons will be effected through the Plaintiff's Advocate's offices).
3. The 1st Defendant is a founding director of the Plaintiff and has previously served as the Plaintiffs managing director and was as at the time the Plaintiff was put into receivership its Chairman.
4. The 1st Defendant is also a Shareholder and a Director of 5th, 6th, 17th, 11th 12th, 13th, 14th, 15th.
5. The 2nd Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya and is the immediate former Group Managing Director of the Plaintiff's Board, of Directors (Service of summons will be effected through the Plaintiff's Advocate's offices).
6. The 2nd Defendant served as the Group Managing Director of the Plaintiff from 2014 to April 2016. He was previously a Deputy Managing Director of the Plaintiff and held various managerial positions in treasury and assets portfolio of the Plaintiff. The 2nd Defendant is also a Shareholder and Director of 5th, 6th, 17th, 11th 12th, 13th, 14th, 15th.
7. The 3rd Defendant is a male adult of sound mind who resides and works for gain

in Nairobi, Kenya and is the Plaintiff's immediate former General Manager Finance (Service of summons will be effected through the Plaintiff's Advocate's offices).

8. The 4th Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya and is the Plaintiff's immediate former General Manager Corporate Assets (Service of summons will be effected through the Plaintiff's Advocate's offices).
9. The 3rd and 4th Defendants were at all times responsible for passing of journal entries and for credit and finance administration including authorization with respect to utilization and payment from the various accounts held by the Plaintiff including reporting to the Central Bank of Kenya and were at all times familiar with the transactions that are the subject matter of this suit.
10. The 5th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
11. The 6th Defendant is a limited liability company registered in Mauritius, (Service of summons will be effected through the Plaintiff's Advocate's offices).
12. The 7th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
13. The 8th Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya (Service of summons will be effected through the Plaintiff's Advocate's offices).

14. The 8th Defendant is sued herein as a direct beneficiary of the fraud, perpetrated by the 1st, 2nd, 3rd & 4th Defendants by virtue of his shareholding in 6th, 12th and 15th Defendant.
15. The 9th Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya (Service of summons will be effected through the Plaintiff's Advocate's offices).
16. The 9th Defendant is sued herein as a direct beneficiary of the fraud perpetrated by the 1st, 2nd, 3rd & 4th Defendants against the Plaintiff, by virtue of his shareholding in 6th Defendant, 12th Defendant, 14th Defendant, 15th Defendant & 17th Defendant.
17. The 10th Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya (Service of summons will be effected through the Plaintiff's Advocate's offices).
18. The 10th Defendant is sued herein as a direct beneficiary of the fraud, perpetrated by the 1st, 2nd, 3rd & 4th Defendants against the Plaintiff, by virtue of his shareholding in 6th Defendant, 12th Defendant, 13th Defendant, 15th Defendant & 17th Defendant.
19. The 11th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
20. The 11th Defendant is sued herein as one of the purported Special Purpose Vehicle which was fraudulently used by 1st, 2nd, 3rd and 4th Defendants to divert funds from the Plaintiff's account.
21. The 12th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).

22. The 13th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
23. The 12th and 13th Defendants are sued herein as some of the purported Special Purpose Vehicles which were fraudulently used by 1st, 2nd, 3rd and 4th Defendants to divert funds from the Plaintiff's account.
24. The 14th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
25. The 14th Defendant is sued herein as one of the purported Special Purpose Vehicle which was fraudulently incorporated and used by 1st, 2nd, 3rd and 4th Defendants to divert funds from the Plaintiff's account.
26. The 15th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
27. The 15th Defendant is sued herein as one of the purported Special Purpose Vehicle which was fraudulently incorporated and used by 1st, 2nd, 3rd and 4th Defendants to divert funds from the Plaintiff's account.
28. The 16th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
29. The 17th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).

30. The 18th Defendant is a limited liability company registered in the republic of Kenya under the Companies Act, (Service of summons will be effected through the Plaintiff's Advocate's offices).
31. The 18th Defendant is sued for having being used by the 1st, 2nd, 3rd and 4th Defendants properties using the Plaintiffs funds which properties were not disclosed in the Plaintiffs accounting records.
32. The 19th Defendant is a male adult of sound mind who resides and works for gain in Nairobi, Kenya and is the Plaintiff's immediate former Director (Service of summons will be effected through the Plaintiff's Advocate's offices).
33. The 20th Defendant is a female adult of sound mind who resides and works for gain in Nairobi, Kenya (Service of summons will be effected through the Plaintiff's Advocate's offices).
34. The 19th and 20th Defendants are sued in their capacity as Shareholders of the 18th Defendant.
35. The Plaintiff was incorporated in 1995 as a bank and is duly licensed under the Banking Act. Its core business is the taking of deposits from customers and advancing of loans, furnishing of security and/or guarantees to its customers and having the same secured the Banking Act, the Prudential Guidelines and any other relevant provisions others the furnishing of security and/or guarantees as well as the signing of loan documentation.
36. The Plaintiff states that it was at all material times, under a Statutory obligation under the provisions of Sections 10 and 11 of the Banking Act, and the Prudential Guidelines, which govern all financial institutions, not to:

i. "Grant or permit to be outstanding any unsecured advances in respect of

any of its employees or their associates;

ii. Grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise.”

37. The Plaintiff states that at all material times the Defendants jointly and severally had duty of care to the Plaintiff which included those set out in the Banking Act and the Prudential Guidelines set out hereinabove, but also included and were not limited to:

iii. A duty to act in good faith and in the best interests of the Bank.

iv. A duty not to act for purposes collateral to the purposes conferred by the Bank's Articles and duties under the Banking Act as well as the Bank's duties to its depositors and generally to the public.

v. A duty not to place themselves in a position in which his personal interests did or might conflict with those of the Bank.

vi. A duty not to make any secret profit or receive any secret payment from any third party with whom they were dealing whether in his capacity as officers of the Plaintiff or otherwise: and

vii. A duty to account for any secret profit or secret payments received.

38. The Plaintiff states that on 7th April 2016 pursuant to the provisions of Sections 43(1), 43(2) and 53(1) of the Kenya Deposit Insurance Act, 2012, the Central Bank of Kenya (CBK), appointed the Kenya Deposit Insurance Corporation (KDIC) as a receiver for Plaintiff for a period of twelve months.

39. Pursuant to its appointment as a receiver KDIC assumed control of the Plaintiff with the approval of CBK as provided under Section 44 of KDI Act and appointed KCB Bank Kenya Limited as manager pursuant to the provisions of Section 44 (b) (iii) of the Kenya Deposit Insurance Act Cap 487C of the Laws of Kenya.
40. The appointment of KDIC as a receiver for the Plaintiff was carried out in the interest of its depositors, creditors and members of the public, the Plaintiff having experienced liquidity difficulties, rendering likely to fail to meet its financial obligations, thus unsafe, and unsound for it to transact banking business.
41. The Receiver having taken over the management of the Plaintiff, has conducted investigations over the management, transactions, and annual financial statements of the Plaintiff as at 31st December 2015.
42. The investigations conducted at the Plaintiff have specifically focused on;
- a) The inclusion of an amount of **KES7.9Billion** reflected in the loans and advances to customers, classified as 'other assets' in the Plaintiff's balance sheet, and subsequently re-classified as loans and advances during the statutory audit.
 - b) **KES1Billion** irregularly advanced to the 1st Defendant /Director who was also a significant shareholder of the Plaintiff,
 - c) **KES6.9Billion** irregularly advanced to third party entities owned by the 1st and 2nd Plaintiff.

- d) A further **KES8.7Billion** included in loans and advances to customers,
- e) **KES3.1Billion** not supported with any documentation, classified as 'other assets' in the Plaintiff's balance sheet, and subsequently re-classified as loans and advances during the statutory audit.
- f) **KES5.6B** related to overdue accrued interest on loans and advances to customers.

PROPERTIES OBTAINED USING THE PLAINTIFF'S FUNDS

- 43. The Plaintiff states that at all times material to these proceedings, the 1st to 4th Defendants jointly and severally registered third party companies, and took shares in the 11th, 12th, 13th, 14th and 15th Defendants for the sole purpose of utilizing these companies hold property purchased using funds misappropriated from the Plaintiff's funds and/or deposits, with the sole intention to defraud the Plaintiff.
- 44. The Plaintiff states that at all times material to these proceedings, the 1st to 4th Defendants jointly and severally misappropriated the Plaintiff's funds and/or deposits, for the purchase of properties, and thereafter with the intention to defraud the Plaintiff, caused the said properties to be registered in the names of third party companies, the shares in which companies were wholly, or substantially owned by the 1st, 2nd, 5th, 6th, 15th, 7th, 8th, 9th and 10th Defendants for their sole benefit, to the exclusion of the Plaintiff.
- 45. The Plaintiff states that the 1st and 2nd Defendants claim that the third party companies were incorporated as Special Purpose Vehicles (SPV's) for use by the Plaintiff to carry out investments in property for the benefit of the Plaintiff is false and an afterthought and cannot in any way be true.

46. A General Ledger (GL) can be defined as the main accounting record of a company or organization. This is where all transactions occurring within an entity are recorded.

A bank's general ledger can be segmented into internal general ledger accounts and customer accounts. Transactions conducted by other persons in their private capacity (bank customers) should be recorded in the customer accounts. Customer accounts could also be defined as the account a person holds with a bank and from which the customer can make withdrawals or make deposits.

47. After a thorough audit the Plaintiff further states that the narrations reflected in the GL extracts obtained for both the Central Bank of Kenya Settlement (hereinafter referred to as CBK Settlement Account) and the Sundry Debtors accounts, show that at all material times the 3rd and 4th Defendants initiated and authorized the payments from these accounts. The explanations obtained from the 3rd and 4th Defendants, indicate that the amount of **KES7.5B** was disbursed and utilized as follows in the table 1 below:

Table 1

Property	Registered Owner	Cost (KES "million")	Year of purchase	Valuation (KES "million")
L.R No. 4580/20 – Riverside (Shamba 1)	Rinascimento Properties	157	2011	500
L.R No. 4580/18 – Riverside (Shamba 2)	Nine Fifty Ltd	153	2011	500
L.R No. 209/7572 – Riverside (1-way 1)	Nine Fifty Ltd	360	2014	420
L.R No.	Nine Fifty Ltd	425	2015	400

209/7570/1 – Riverside (I-way 2)				
L.R No. 209/7570/2 – Riverside (I-way 3)	Nine Fifty Ltd	150	2015	230
L.R.No. 3734/205 – Jacaranda	Light House Ltd	120	2014	180
L.R. No. 337/ 441-4761 Mlolongo	Light House Ltd	650	2012	1 029
L.R.No. 3734/975 - I-Way Sisters	Nine Fifty Ltd	80	2015	400
L.R. Number 30449 –Watermark	Rinascimento Properties & Riverside Mews Ltd	890	2012	1 294
L.R. Number 12498/4 Mathatani	Mathatani Ltd	750	2014	1 950
L.R. No. 29271: 7B1 Garden City Apartment	Light House Ltd	65	2015	47
Opera Grand- DubaiBurjKhalifa	(Zafrullah Khan)	600	2015	600
TOTAL		4,574		7,550

48. The Plaintiff states that the property value of KES.7.5B stated by the 1st, 2nd 3rd and 4th Defendants as the revalued amount is not the actual purchase and development cost. Indeed the 4th Defendant was only able to verify the purchase price and property costs totaling to KES.1.3B. It remains unclear as to what was the actual cost of the properties.

49. The Plaintiff states that during the aforementioned investigations, when required to elaborate, the 1st and 2nd Defendants, purported to explain that the SPV's were specifically registered carry out investments on behalf of the Plaintiff, and offered to transfer to the Plaintiff their shareholding in the SPV's tabulated in paragraph 47 above, and deposited the titles to the property held by the said SPV's with the Plaintiff.
50. The Plaintiff states that the Plaintiff's offer to transfer the shareholding in the SPV's tabulated paragraph 47 above was prompted by the adverse audit findings by the Plaintiffs Auditors in March 2016. However the transfer of shares were incomplete and not all the titles were returned to the Plaintiff.
51. Table 2 below is the schedule of properties whose documents of title were returned to the Plaintiff by the 1st and 2nd Defendants:-

Table 2

No.	Document.	Date.	Remarks.
1.	<ul style="list-style-type: none"> <i>Certificate of Title:</i> Title No. IR No. 170867 (LR No. 3734/1409) Nairobi. 		Original. INOThe Lighthouse Property Company Ltd.
2.	<ul style="list-style-type: none"> <i>Certificate of Title:</i> Title No. IR No. 88874 (LR No. 12498/4, Original No. 12498/2/2) West of Machakos Municipality. 		Original. INOMathatani Ltd.
3.	<ul style="list-style-type: none"> <i>Certificate of Title:</i> Title No. IR No. 63714 (LR No. 209/7570/1, Original No. 187650) Nairobi. 		Original. INO Nine Fifty Ltd.
4.	<ul style="list-style-type: none"> <i>Certificate of Title:</i> Title No. IR No. 63715 (LR No. 209/7570/2, Original No. 187651) Nairobi. 		Original. INO Nine Fifty Ltd.
5.	<ul style="list-style-type: none"> <i>Certificate of Title:</i> Title No. IR No. 13364 (LR No. 4580/18, Original No. 4580/2/2) Nairobi Municipality. 		Original. Registered at Land Titles Registry (Nairobi) on 14.08.1987 as

		No. IR 13364/11INO Nine Fifty Ltd.
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No.	Document.	Date.	Remarks.
6.	<i>Certificate of Lease:</i> Title No. Noonkopir Township/223 ino. Friends Property Holdings.	09.07.2014	
7.	<i>Title Deed:</i> Title No. Kwale/Diani Complex/718 ino. Nine Fifty Limited.	07.05.2014	
8.	<i>Title Deed:</i> Title No. Kwale/Diani Complex/719 ino. Nine Fifty Limited.	07.05.2014	
9.	<i>Title Deed:</i> Title No. Kwale/Diani Complex/720 ino. Nine Fifty Limited.	07.05.2014	
10.	<i>Grant of Title:</i> No. CR 22741 (LR No. 1956/796 – Land Survey Plan No. 160353) Voi Township, TaitaTaveta ino. Beatrice MkanyikaMwambili.	01.06.1986	Transfer to Riverside Mews Limited on 21.09.2015
11.	<i>Grant of Title:</i> No. CR 61385 (LR No. 1956/797 – Land Survey Plan No. 235807) Voi Municipality, Taita District ino. KhamisChomeAbdi.	01.11.1998	Transfer to Riverside Mews Limited on 21.09.2015
12.	<i>Sub-Lease:</i> LR No. 29271 (Apartment No. 7B1, 7 & 8 Floors – Block B, Park View Complex, “Garden City Village”). GC Residential Ltd. (Lessor) To Riverside Mews Ltd. (Lessee).	23.06.2016	Registered at Land Titles Registry (Nairobi) on 4.08.2016 as No. IR 178503/1INO Riverside Mews Ltd.
13.	<i>Certificate of Title:</i> Title No. IR No. 175678 (LR No. 209/21567, Original No. 209/7572) City of Nairobi.	20.04.2016	Original. Registered at Land Titles Registry (Nairobi) on 20.04.2016 as No. IR 175678/1INO Nine Fifty Ltd.
14.	<i>Lease:</i> Title No. IR No. 175678 (Parcel No. 209/21567) County of Nairobi.	1.07.1971	Original. Registered at Land Titles Registry (Nairobi) on 20.04.2016 INO Nine Fifty Ltd.

52. The Plaintiff states that a review of the board minutes from 2012 to 2015, there is no evidence that the Plaintiff's Board of Directors was made aware of the purported SPV companies and their activities.
53. On 22nd February 2016 an email was sent from a whistleblower from Laurent Demey to the 1st, 2nd Defendant and copied to Richard Carter a non-executive director of the Plaintiff stating among others the following:-
- a) That as current and former employees of the Plaintiff and following the events of Imperial Bank (now in receivership) they are deeply concerned that their beloved Plaintiff is on the blink of becoming the next Imperial Bank.
 - b) They have decided to whistle blow on the fraudulent activities carried out by the current Chairman (the 1st Defendant), current GMD (the 2nd Defendant) and a few long serving senior staff accomplices.
 - c) It is the duty of the 1st and 2nd Defendants to verify the information they provided and take corrective action failure to which they shall approach the new Central Bank of Kenya Governor to whom they will explain why they have failed to take action.
 - d) The 1st Defendant had stolen funds and used them for personal ventures:-
 - i) which include Sema, Lighthouse Properties, Genghis e.t.c
 - ii) investment in prime real estate properties worth billions of shillings
 - iii) accumulating close to 50% of the Plaintiffs shares including a recent rights issue through proxies and shell companies
 - iv) Millions of dollars stashed away in offshore account

And as a result of the above the Plaintiff was facing liquidity crisis although the 1st Defendant vehemently denied the contents of the above whistleblower email

whose contents were later proved to be true in every aspect.

54. The Plaintiff states that it is evident that the existence of the purported SPV's was kept from the Board of Director by an email dated 16th March 2016 from Richard Carter ("Mr. Carter") a non-executive director of the Plaintiff, responding to Mr. Njaga's email of 15th March 2016 which email was in response to a previous email by a whistleblower. In his email, Mr. Carter stated that he had reviewed the Plaintiff's response with great interest and that he wanted full details of the Plaintiff's relationship with each of the SPV's. Mr. Carter was appointed to the Board of the Plaintiff on 8th May 2014, his email corroborates the fact that there were no board discussions on the related entities and that the directors were unaware of their existence.
55. The Plaintiff states that it has established through information obtained from some of its other directors; Ruth Muthoni, Mr. Shariff, Anthony Gross and the 1st Defendant that the purported SPV companies and properties purchased through them were not discussed at board level. Ruth Muthoni, Anthony Gross and Mr. Shariff indicated that they had obtained information on the properties and companies through informal means mostly from discussions with the 1st Defendant.
56. The Plaintiff states that 1st to the 4th Defendants intentionally failed to present the matter of the purported SPV's before the Board of Directors as they were aware they would not obtain board approval, and had no intention that purported SPV's be for the benefit of the Plaintiff. The subsequent purchase of properties in the absence of board approval was evidently for their own benefit, to the exclusion of the Plaintiff.
57. The Plaintiff further states that as evidence that the purported SPV companies were never created to invest in properties on its behalf as they did not remit any

income to the Plaintiff despite management accounts and financial reports showing that the purported SPV companies were active and collecting revenue.

58. Further to the foregoing, the Plaintiff states that by an email dated 11th November 2015 from a Mr. Mwaniki Gakio an employee of the Plaintiff, sharing the management accounts of the 13th Defendant with the 1st, 2nd Defendants, and the 9th Defendant ("Mr. Mavindu"), and copied to Conrad Lukale ("Mr. Lukale") who worked for Genghis, Stephen Karumbi ("Mr. Karumbi") the Plaintiff's Head of Analytics and Johnson Kamau ("Mr. Kamau"), the Plaintiff's former General Manager, Strategy, the 1st Defendant replied to the email addressing the 9th Defendant stating "This is my personal stuff. Can you restrict circulation?".
59. The Plaintiff states that the instructions for the purchase of the properties were issued by the 1st Defendant, these instructions were given the 4th Defendant verbally or via email and thereafter effected by approving payments which would be posted to the Plaintiff's internal accounts.
60. The Plaintiff has verified the shareholding and directorship of the companies stated at paragraph 47 and states that the 1st Defendant is guilty of conversion, as during the Plaintiff's investigations the 1st Defendant maintains that although 16th and 17th Defendant are related to the Plaintiff, the properties owned by the said Defendants are not assets of the Plaintiff.
61. The Plaintiff further states that with regard to the Edenville property, while the 1st Defendant asserts that the houses relating to the 18th Defendant were acquired by the Plaintiff and subsequently sold to members of staff at a discounted rate, these assertions are unverifiable as there are no documentation to support the 1st Defendant's assertions and the transactions.

62. That in respect of the property held by PEP Ltd, the Plaintiff has established that the ownership had been listed under the 11th and 13th Defendants in the schedule dated November 2015 provided by the 4th Defendant.

EXPENSES & WITHDRAWALS BY AND/OR IN FAVOUR OF THE 1ST DEFENDANT, IN COLLUSION WITH THE 3RD & 4TH DEFENDANTS

63. The Plaintiff states that its review of the CBK Settlement account revealed numerous withdrawals made by the 1st Defendant as well as direct payments to companies affiliated to him.
64. The total amount attributable to the 1st Defendant's personal expenses totaled **KES 2,205,642,136**, this is based on information provided by the 4th Defendant and supported by relevant documentation including transfer forms and TT confirmations, as tabulated in the table 3 below;

Table 3

Payments for proposed Iman Bank of Somalia	48,401,603
Payments for Rivières Finance	100,000,000
Payments for Genghis Capital	161,421,824
Payments to Mr. Khan(properties and others)	507,910,500
Payments for Orchid Capital	252,784,444
Payments towards Sema Project as set-up capital	54,000,000
Payments for Mode joint venture	29,123,765
Bonus payment (Later converted to a loan)	1,052,000,000

65. The amounts withdrawn/transferred upon the instruction of the 1st Defendant

as summarized above were not specified either as loans or overdrafts; furthermore, the GL used was an internal operation GL as opposed to a normal customer account.

66. The Plaintiff notes that the transfers were not reported to the board despite some amounts involved being in excess of **KES100M** which requires approval of the Board Credit Committee in accordance with the relevant Bank Credit Policy.
67. The Plaintiff further notes that there was no comprehensive record of all withdrawals by the 1st Defendant. Most of these transfers were authorized by the 3rd and 4th Defendants, on instructions of the 1st Defendant.
68. The **KES48M** paid out for the proposed Iman Bank of Somalia, according to information provided by the 4th Defendant, is disclosed in the CBK Settlement account in the table 4 below as follows:

Table 4

31 October 2013	65748633	Internal Account Transfer 000FXTR131790003-C LEANUP	6090133040002	25,780,562.45
30 December 2013	74573247	Internal Account Transfer	6045133640003	22,621,041.85
		TOTAL		48,401,604.30

69. That regarding the payments for the proposed Iman Bank of Somalia, the Plaintiff states that based on the information obtained from the 1st and 2nd Defendants, the 1st Defendant and other investors planned to open a bank in Somalia, to which he, the 1st Defendant had already obtained a license for. The

1st Defendant was to have a stake in the bank through an entity styled the 6th Defendant registered in Mauritius, in which he is the majority shareholder; it suffices to say the Plaintiff would have no stake in Iman Bank of Somalia, despite being the source of the funds towards the same.

70. The Plaintiff states that email reviews reveal correspondence related to the formation of an Iman Bank of Somalia; on 24th November 2012, Iman Hussein, Assistant General Manager-Islamic banking ("Ms Hussein") from the Plaintiff wrote to Aly Shah (a partner at Anjarwalla and Khanna) and informed him that they were in the process of capitalizing Iman bank of Somalia to be owned by Iman Holding Company based in Dubai. She further states that Rinascimento being the common shareholder would send Anjarwalla and Khanna Advocates the required funds amounting to **USD 275,000** on Monday 26th November 2012.
71. In the same email correspondence, on 26th November 2012, Mr. Njaga the then Chief Finance and Strategy Officer of the Plaintiff, wrote to Karim Anjarwalla, Aly Shah and Iman Hussein indicating that the transaction had nothing to do with the Plaintiff and that it related to Rinascimento which was the investing entity. However, based upon the information provided to us by the 4th Defendant the Plaintiff confirms that the funds emanated from the Plaintiff's CBK Settlement account.
72. The Plaintiff states that a review of the board minutes reveals no mention of this project, information obtained from the 4th Defendant, confirms that the project failed to materialize, and the funds initially invested in license fees were not recovered.
73. During its review, the Plaintiff established that an entity styled Rivieres Finance Ltd ("Rivieres") received **KES 100,000,000** in a single transaction which according to the narrations reflected in the CBK Settlement account had been

indicated as 'correction of wrongly posted entry fx0001/3007141' as shown in the table 5 below.

Table 5

19 June 2015	209589030	Internal Account Transfer CORRECTION OF WRONGLY POSTED ENTRY FX0001/3007141	6029151700001	100,000,000

74. The Plaintiff has established that the 1st Defendant is the majority owner/ shareholder of Rivières Finance Ltd, which deals in equipment leasing and is indicated on its website as a member of Chase Group. However, according to the Plaintiff's website, the only member companies of Chase Group are; the Plaintiff, Chase Iman, Rafiki Microfinance, Chase Assurance and Chase Group Foundation. Rivières is also not disclosed as a related party in the Chase Group financial statements as at 31st December 2015.
75. The Plaintiff states that the 7th Defendant ("Genghis Capital") was founded in 2008 as a brokerage firm; with the directors as the 1st, 2nd and 10th Defendants. Further analysis reveal that the two amounts were transferred to two separate accounts namely the CBK Settlement account-0004005459001(USD) and the Fair Value Reserves account -2000001515 respectively.
76. The Plaintiff has established that the total amount of funds transferred to the 7th Defendant was **KES 161,421,825**. According to information provided by the 4th Defendant, there are two instances where funds were transferred to the Genghis account from the CBK Settlement account as per the table 6 below.

Table 6

11 December 2013	73260893	Internal Account Transfer FAIR VALUES RESERVES	6030133530001	32,775,035
19 December 2013	72188067	Internal Account Transfer OF FUNDS TO GENGHIS	6020133450001	128,646,789
		TOTAL		161,421,825

77. The Plaintiff states that there is no identifiable direct link between the 7th Defendant and the two accounts which were credited showing that the amounts may have been transferred to other accounts instead, though the issues was raised with the 4th Defendant, he has been unable to provide explanation regarding the same.

78. The Plaintiff further states that according to the information held by the 4th Defendant, **KES 252,784,444** was transferred to an entity named Orchid Capital in a transaction as reflected in table 7 below. However, the description provided in the CBK Settlement account indicated that the funds were transferred to Ava Trade Ltd, the transfer is supported by an extract of Ava Trade Ltd's USD bank statement. Following an interrogation of the said transactions, the 1st and 2nd Defendant informed the Plaintiff that Ava Traders are fund managers at Orchid Capital Kenya.

Table 7

15 June 2015	207686507	Internal Account Transfer AVA TRADE LTD-TRANSFER OF USD 2,600,663. @	6030151660004	252,784,444

		97.20 FOR ACCOUNT 6294479		
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79. The Plaintiff has established from Orchid Capital Kenya Ltd (“Orchid Capital”) website that it was founded in 2004; the company describes itself as an independent financial advisor with expertise in offshore investments. The 1st Defendant is indicated as the chairman of Orchid Capital’s board while the 2nd and 10th Defendants are indicated as directors.
80. Based on official background information search results obtained from the Registrar of Companies, the company was registered on 8th February 2013. The company’s directors are Mr. Ali Cheema (10th Defendant) with 1,750 shares (50%), Mr. Kabui (2nd Defendant) and Mr. Khan (1st Defendant) each with 375 shares (25% each) with the total number of issued shares being 2,500.
81. Further Sema Project was a joint venture for the development of a Mobile Virtual Network Operator (“MVNO”) project by Sema Mobile Services Ltd a company whose directors included as the 1st and 2nd Defendants.
82. The Plaintiff states an amount of **KES 54,000,000** was transferred from the CBK Settlement account to the Sema Mobile Services Ltd account as confirmed by an extract of Sema’s bank statement shown in table 8 below.

Table 8

13 August 2015	231354708	Internal Account Transfer SEMA PROJECT	6007152250001	54,000,000

83. The Plaintiff has established from information obtained from Mr. Stephen Karumbi, Plaintiff’s Senior Manager-Strategy (“Mr. Karumbi”), that Sema Mobile

Services Ltd (“Sema”) is a joint venture between Mobile Decisioning Holdings Ltd (“MODE”) and, the 1st and 2nd Defendants. The project was established for the development of a MVNO banking solution. The MVNO license was originally issued to Zion Cell Ltd owned by MODE before the company changed its name to Sema Mobile Services under the joint ownership of the 1st and 2nd Defendants.

84. According to the background information search results, obtained by the Plaintiff, Sema Mobile Services Ltd is jointly owned by MODE with 5,000 shares (50%) and Quadco Two Hundred and Seventy Two Ltd with 5,000 shares (50%). The 1st and 2nd Defendants are also reflected as directors.
85. A review of Plaintiff’s board minutes, reveal the lack of any resolution by the board sanctioning this project, interrogations similarly reveal that the various other directors of the Plaintiff were unaware of the project, a review of the ExCo meeting minutes revealed no record of discussions related to this project.
86. The Plaintiff, based on information provided by the 3rd Defendant, has established that the board was not consulted on the decision to start the project, and this was also confirmed by the 1st Defendant who indicated that he wanted to inform the other shareholders once the project was launched.
87. The Plaintiff states that based on the information obtained, it has established that payments with respect to this project were irregular as they had neither been authorized by the board nor disclosed to the board.
88. The Plaintiff has established, based on information provided by the 4th Defendant, a total amount of **KES 29,123,765** was paid out with regards to a virtual banking project run by Chiggle Mobile Services Ltd for the financial year ending 31st December 2015. Chiggle Mobile Services Ltd (“Chiggle”) was

registered as a company in Kenya on 21st August 2015 with shareholders of the company reflected as the 1st and 2nd Defendants each holding one share out of the two shares issued.

89. Further Chiggle was apparently founded in order to develop a virtual banking platform as detailed in a business plan that was provided to us by Mr. Karumbi. Chiggle is purported to be different from the Sema project as Chiggle could be accessed both on the mobile platform and on the internet, the Sema project was a mobile based MVNO solution. Payments made with respect to the Chiggle project included license fees, incorporation expenses, per diems for consultants and accommodation expenses.
90. The Plaintiff notes that from the information provided by the 4th Defendant summarizing the payments made for Chiggle, there are included expenses described as Sema related expenses. The Plaintiff states that there were no discussions by the board on the formation of Chiggle or authorized payments for the project.
91. Based on information provided by the 4th Defendant, Plaintiff states that the 1st Defendant's other personal withdrawals and expenses including expenses incurred in the purchase of personal properties amounted to **KES 507,910,500**.
92. Based on TT confirmations, email reviews and other documentary evidence, the Plaintiff has identified several transactions which were effected upon the 1st Defendant's instructions. The transactions relate predominantly to the purchase of property and other goods such as motor vehicles.
93. The Plaintiff states that one of the companies paid on behalf of the 1st Defendant is AMB Real Estate Ltd ("AMB"), a property developer based in the USA, a total of **USD 2,100,000 (KES 210,000,000)** was paid out to this company

from the CBK Settlement account. This transaction is supported by TT confirmations obtained from the Bank's finance records.

94. The Plaintiff has also identified a further payment of **KES 15,399,000** made to AMB real Estate.
95. The Plaintiff states that AMB received the payments for the construction of a house on behalf of the 1st Defendant in the USA. The payments were authorized by the 3rd and 4th Defendants as confirmed by the RTGS/EFT transfer forms obtained from the bank.
96. The Plaintiff has identified transactions relating to the purchase of motor vehicles in the USA and registered in the name of Ms. Shehla Khan, the 1st Defendant's wife. The transaction involved the purchase of '**Ferrari Dino**' at a cost of **USD 455,000(KES45,500,000)**.
97. The Plaintiff states that it has also identified a transaction involving the purchase of a car described as "a Limited Edition Corvette" from a company called Blasius Chevrolet **Cadillac Inc.** The total cost for this particular car was **USD 127,551.33(KES 12,755,133)**, with the car was in the name of Shehla Khan as per the email instruction issued to the 4th Defendant by the 1st Defendant.
98. Email and TT reviews conducted by the Plaintiff also identified several transfers to Shehla Khan amounting to **USD 35 000** for "upkeep" as well as other transfers to her bank account.
99. The Plaintiff states that on 14th May 2015, its board authorized a performance based bonus payment of **KES 1,052,000,000** to the 1st Defendant, payable over a five-year period in equal installments. Despite the resolution that the same be paid over a period of five years, the payments were made over a period of one

and a half (1^{1/2}) months as summarized in the table 9 below.

Table 9

16 June 2015	208239697	Transfer to Rinascimento Global Ltd	000OTRF15167000 1	236,381,355
18 June 2015	209124695	Transfer to Rinascimento Global Ltd	000OTRF15169000 5	238,846,230
25 June /2015	211637184	Rights Issue—Mr Khan	6064151760003	174,482,500
25 June 2015	211636380	Rights Issue-Mr Khan	6064151760001	101,607,500
29 June 2015	212984330	Rights Issue-Nemaja Khan	6081151800006	47,040,000
16 July 2015	220216370	Transfer to AGN Kamau advocates	000RTOU15197000 8	109,843,404
31 July 2015	225802278	Being R.IssueFestuca Investment	3040152120017	145,275,000
		TOTAL		1,053,475,989

100. The Plaintiff states that the entire amount of **KES1.05B** was withdrawn within a period of one and a half months between June and July 2015 contrary to the board resolution stipulating that the amount was payable over a period of five years.
101. The Plaintiff states that subsequently a board resolution was drafted and signed by the 2nd Defendant and Mr. Njaga indicating that the bonus award had been “vacated”. The resolution is dated 5th December 2015.
102. The Plaintiff has further established that although the bonus amount was **KES 1,052,000,000**, the actual amounts paid totaled to **KES 1,053,475,989**, neither the 1st nor the 4th Defendants have been able to provide explanations as to the

difference in the two amounts.

IRREGULAR TRANSACTIONS RELATING TO THE PLAINTIFFS ACCOUNT HELD AT THE DEVELOPMENT BANK OF KENYA LIMITED

103. In the course of investigation the Plaintiff established irregular transactions in the Plaintiffs Development Bank account. This account was initially set up to record transactions performed with the Development Bank of Kenya (“DBK”) where the Plaintiff would deposit funds meant to guarantee staff loans advanced to its employees.
104. The Plaintiff has established that the account was fraudulently used by the 1st, 2nd, 3rd and 4th Defendants to undertake irregular transactions. Indeed a discrepancy between the amounts confirmed¹ by DBK and amounts recorded in Plaintiff GLs as shown in the table below confirms that the account was never utilized for the intended purpose.

Table 10: Summary of discrepancies in the Development bank USD/KES accounts as at 31 December 2015

DBK account no (Currency)	Amount in the Chase Bank GL	Amounts confirmed by DBK	Difference
4005510001 (KES)	KES2,290,347,571	KES997,833,517	KES1,292,514,054
4005510002 (USD)	USD 15,262,379	USD 2,500,000	USD 12,762,379

105. The Plaintiff identified several transactions in both the USD and KES accounts which were unrelated to the nature of the transactions that ought to have been recorded in this account.
106. The Plaintiff noted that multiple cash withdrawals in both accounts had been done by 4th Defendant and we also identified several payments made to AMB real Estate for the construction of 1st Defendant’s house in the USA.

Exhibit 78: Confirmation of balances by DBK

Cash Withdrawals by the 4th Defendant

107. The Plaintiff established that cash withdrawals from the Development Bank KES/USD accounts amounted to KES 108,390,800. These withdrawals were not reported in the weekly Cash Threshold Reports (“CTR”) as well as Suspicious Transaction Report (“STR”) reports to the Financial Reporting Centre despite the amounts being higher than the threshold required.
108. According to David Gachucha, the Riverside branch service delivery manager of the Plaintiff (“Mr Gachucha”), the issue of withdrawals made by the 4th Defendant from this account had been escalated via email² to Mr Kamau and employee of the Plaintiff where the 3rd Defendant had been copied as well. The issue was later escalated to Michael Kimeu, the risk and compliance manager of the Plaintiff (“Mr Kimeu”) who further escalated it to the 2nd Defendant. There was no evidence that any action was taken by the 2nd Defendant to address the issue and in his email to the 4th Defendant he described the matter as “a lot of rubbish”.
109. Further documentary review and discussions with the 4th Defendant revealed that the cash was withdrawn on behalf of Mr Wageningen, a shareholder. According to the 4th Defendant, the payments to Mr Wageningen were funded from his company involved in wind power project. However, discussions held with Mr Wageningen³ indicated that he made the cash withdrawals based on the proceeds of shares sold in the Plaintiff. He further indicated that the cash withdrawn was used in buying properties whose sellers requested for cash payments as opposed to wire transfers. He also indicated that he chose not to use his personal accounts as he was going through “personal issues” and requested the 4th Defendant to assist him make the withdrawals bypassing his personal account. Mr Wagenigen concealed his assets by requesting the use of the Bank’s internal accounts for personal transactions.
110. The Plaintiff established that the difference between amounts recorded in the

Exhibit 80: Email from David Gachucha to Joseph Kamau escalating the issue of cash withdrawals
Exhibit 82: Interview notes with MrWageningen.

Development Bank of Kenya Limited and amounts confirmed by official of Development Bank of Kenya Limited constituted payments that were not supported by actual transactions at the Development Bank of Kenya Limited.

111. These payments were irregular as they were done from an internal bank account as opposed to normal client accounts and they were not related to the bank. There was also no documentary evidence to show that the board was aware of these transactions and/or had given its consent.
112. The Plaintiff states that this Development Bank of Kenya Limited account was used by the Defendants as a special vehicle to fraudulently syphon funds from the Bank. The Plaintiff claims KES.1,292,514,054, USD 12,762,379 being the difference between the amounts confirmed by Development Bank of Kenya Limited and the amounts recorded in the Plaintiff GLs.
113. The Plaintiff shall hold the 1st, 2nd, 3rd and 4th Defendants to account for every transaction undertaken in the aforesaid Development Bank of Kenya Limited account.
114. The Plaintiff states that through an analysis of its financial records for the 2015 financial year, it has established that two GL accounts had been classified as 'other assets' and subsequently reclassified as 'loans and advances' during the 2015 statutory audit. An amount of KES10.6B arose from the balances reflected in the two ledger accounts as shown in table 11 below:

Table 11

04005459002	CBK Settlement account	9,222,606,805
100004715	Sundry Debtors	1,453,589,511

115. According to the 3rd and 4th Defendants, the amount of **KES10.6B** comprised in table 12 below:

Table 12

Amounts that related to properties	7.5
Amounts related to a forex rate differential	0.8
Transfers to Mr Khan	2.3

116. A detailed analysis of costs relating to properties reveals a variance of **KES3.2B** between the costs indicated provided by the 4th Defendant and those obtained through a review of the respective sale agreements.

117. The Plaintiff states that based on the analysis provided by 4th Defendant, it confirmed the actual cost and valuation amounts of the properties mentioned above through an independent review of the sale agreements, proof of payments for the properties and valuation reports, interrogation of the officers concerned including the 1st Defendant, and email searches to understand the nature of the properties purchased, which resulted into a detailed analysis of the properties as set out in the table 13 below:

Table 13

Project details	Ref no	Valuation details	Valuation date	OMV	Cost	Purchase date	Purchaser	Seller
Mathatani property	L.R No. 12498/4	Ardhiworth	16 February 2016	1,950	125	07April 2010	-Zafrullah Khan - Sheila Khan - Daniel Mavindu - Duncan Kabui - Ken Obimbo - Winfred	-Susan Leonard - Sally Pearson - Charles Leonard - Allan John Dixon - Christoph

							Mbuvi - James Mwaura	er Flat - Timothy Tucker
Riverside I-Way- 1	L.R No. 209/757 2	Ardhiworth	18 April 2016	420	320	22 August 2013	Lighthouse	- SonalRake sh Patel
Jacaranda property	L. R No. 3734/20 5	Hillscape	02 February 2016	180	120	04 October 2013	Lighthouse	-Omar Yakub - NasimBan uYakub
Shamba 1	L.R No. 4580/20	Ardhiworth	18 February 2016	600	105	18 April 2011	Rinascime nto Ltd	- Maggiorin oBotta - Margaret Botta
Shamba 2	L.R No. 4580/18	Ardhiworth	18 February 2016	500	95	18 April 2011	Nine Fifty Ltd	- Maggiorin oBotta - Margaret Botta
Riverside_I -Way 2_Wainana	L.R No. 209/757 0/1	Ardhiworth	07 March 2016	230	255	03 August 2015	Nine Fifty Ltd	-James Wainaina - Rosemary Wainaina
Riverside_I -Way 3_Wainain a	L.R No. 209/757 0/2	Ardhiworth	07 March 2016	215	150	03 August 2015	Nine Fifty Ltd	-Andrew Wainaina - Alison Wainaina
Mlolongo property	L.R Ni 337/444 1/4761	Ardhiworth	18 February 2016	1,029	-	Outstandi ng	Outstandin g	Outstandin g
Garden City: Apartment 7B1	L.R No. 29271 : 7B1	Ardhiworth	29 March 2016	47	29	24 March 2014	Riverside Mews Ltd	G.C Residentia l Ltd
Dubai - Opera Grand/ BurjKhalifa	Not provided	Not provided	-	-	119	08 October 2014	Zafrullah Khan	Emaar Dubai LLC
Watermark property	L.R No. 30449	Ardhiworth	07 March 2016	1,294	-	Outstandi ng	Outstandin g	Outstandin g
I-Way Sisters property	LR No. 3734/97 5	Ardhiworth	24 March 2016	400	-	Outstandi ng	Outstandin g	Outstandin g
Total				6,865	1,318		-	-

118. The Plaintiff states that from its investigations, it has determined that the

above reflected properties were registered in the names of the following entities, with the 1st and 2nd Defendants registered as majority shareholders as shown in table 14 below.

Table 14

Entity	Date of incorporation ⁴	Shareholders ⁵	Directors
Rinascimento Properties Ltd (formerly Rinascimento Ltd) ⁶	7 January 2011	Camelia Investments Ltd (90 shares) and Duncan Kabui (10 shares)	Zafrullah Khan and Duncan Kabui
Nine Fifty Ltd	7 January 2011	Camelia Investments Ltd (90 shares) and Duncan Kabui (10 shares)	Zafrullah Khan, Duncan Kabui, Ken Obimbo and Ali Cheema
Riverside Mews Ltd	6 April 1993	Camelia Investments Ltd (2,499,999 shares) and Zafrullah Khan (1 share)	Zafrullah Khan, Simon Woods and Ali Cheema
Mathatani Ltd	1 September 1948	Zafrullah Khan (53,999 shares) and Duncan Kabui (6,001 shares)	Zafrullah Khan and Duncan Kabui
Lighthouse Property Ltd	13 September 2013	Ken Obimbo (1 Share) and Rinascimento Global Ltd (999 shares).	Zafrullah Khan, Duncan Kabui, Ken Obimbo, Stephen Karumbi and Ali Cheema

119. From its review of the companies the Plaintiff has determined that Camelia Investments Ltd had effected a name change to Riverside Mews Investment Ltd (the 5th Defendant) on 14th April 2015. The shareholders in the 5th Defendant are indicated as Mr. Khan (90 shares) and Mr. Kabui (10 shares), the 1st and 2nd Defendant's respectively.
120. Rinascimento Global Ltd the 6th Defendant herein is a company registered in Mauritius on 3rd August 2010. The shareholders are indicated as 1st and 2nd Defendants together with 9th, 10th and 11th Defendants.
121. From the Plaintiff's review, it has established that the said 3rd party companies held other properties which had not been included in the schedules provided by the 4th Defendant to the Plaintiff's external Auditors, these have been identified.
122. The Plaintiff states that through the said non-disclosure, the Defendant jointly and severely intended to deprive the Plaintiff ownership, and benefit of the said properties as demonstrated by table 15 below.

Table 15: Undisclosed properties in the 3rd Party companies

Related Entity	Property (L.R No)	Acquisition value (KES)
Riverside Mews Ltd (the 13 th Defendant)	4275/13- Riverside office block 205/52- One Riverside Apartment 6A English Point Marina Apartment D01 1946 / 796& 792- Voi plots Ukunda Mosque plot	150,000,000 61,500,000 70,000,000 18,000,000 32,564,000
Nine Fifty Ltd (the 12 th Defendant)	Kwale/Diani Complex/718, 719 & 720	25,000,000
Rinascimento Ltd (now known as the 11 th Defendant)	Nyandarua agricultural plots	40,000,000

Total		397,064,000
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123. The Plaintiff states that during its investigations, the 1st and 4th Defendants stated that these additional and undisclosed properties were either owed by the 1st Defendant or the Plaintiff.
124. The Plaintiff states that in contradiction to their assertion that the SPV's were for utilization by the Plaintiff to hold and invest in property, the 1st Defendant stated that the Ukunda mosque plot and the Nyandarua plots were his personal property. The One Riverside apartment was indicated as belonging to Mr Raj Singh, a senior official of the Plaintiff. The Riverside office block refers to the current Riverside branch office of the Plaintiff while the Voi and Kwale properties were explained as locations intended for future Plaintiff branches.
125. The Plaintiff states that the amalgamation of the purported personal /private properties in these third party SPV's indicates that the entities were not necessarily set up for a "special purpose" but clearly intended to defraud the Plaintiff.
126. Further, the lack of clear demarcation between properties purported to belong to the 1st Defendant and those that belong to the Plaintiff, is indicative of poor corporate governance.
127. The Plaintiff further states that the failure to include the Voi and Kwale properties in the Bank's accounting records resulting in an understatement of the Plaintiff's assets, did not only cause it irreparable harm, but was as a result of the misappropriation, and theft of the Plaintiff's property.

UNAPPROVED CONSULTANCY FEE PAYMENTS TO THE 1ST DEFENDANT IN JANUARY & FEBRUARY 2015

128. The Plaintiff has established that the 1st Defendant entered into a Consultancy Agreement with the Plaintiff appointing him as a strategic consultant to the Plaintiff.
129. In the Board meeting held in March 2015, Duncan Kabui the 2nd Defendant herein (Group Managing Director of the Plaintiff) informed the board that management was considering giving the 1st Defendant a consultancy agreement to provide advisory services during the transition after he stepped down from the Executive.
130. The Plaintiff established that the 1st, 2nd, 3rd, 4th and the management of the Plaintiff entered into a consultancy agreement with the 1st Defendant appointing him as a strategic consultant to the Plaintiff. The appointment was for a term of three (3) years with effect from 1st January 2015 at a monthly remuneration of USD 50,466. The consideration to give the 1st Defendant such an agreement was approved by the Board during the Board meeting in March. The consultancy agreement is however signed and dated by the 2nd Defendant on 1st January 2015 even before the approval for such engagement by the board.
131. The Plaintiff therefore claims a refund, jointly and severally from the 1st, 2nd & 4th Defendants of the **USD 756,990** consultancy fees fraudulently paid out by the Plaintiff and received by the 1st Defendant as the same was paid fraudulently and without the Plaintiff's Board approval.

Undisclosed insider loan

132. In furtherance of the fraud the Plaintiff has established that the 1st, 2nd, 3rd and 4th Defendants fraudulently used the 12th Defendant to syphon funds from the Plaintiff.

133. The Plaintiff has established from the loan book as at 31st December 2016 that the 1st, 2nd, 3rd and 4th Defendants had fraudulently disbursed to the 13th Defendant on 30th October 2012 an undisclosed insider loan of **Kshs.942,978,393** which was not disclosed in the CBK/PR4-4 return form for 31st December 2015. The Plaintiff has also established that:-
- a) The loan was approved without any security being provided and without board approval and which loan was never repaid costing the Plaintiff the sum of Kshs.942,978,393 together with interest. Indeed
 - b) There is nothing to show that the loan advanced to the 12th Defendant was for the benefit of the Plaintiff.
 - c) The loan was never repaid and/or reported to Central Bank of Kenya.
 - d) The said loan contradicts the assertions of the 1st and 2nd Defendant that the 12th Defendant was incorporated as an SPV for the benefit of the Plaintiff. These funds were not utilized for the benefit of the Plaintiff.
 - e) The approval of the loan evidences the 1st to the 4th Defendant sheer disregard of basic corporate governance.
134. The 1st and 2nd Defendants are the shareholders of the 12th Defendant an entity which had been fraudulently presented to the Plaintiff as an SPV meant to invest in properties on behalf of the Plaintiff.
135. The Plaintiff states that the 1st, 2nd, 3rd, 4th and 12th Defendants fraudulently misappropriated the above funds from the Plaintiff and are liable to pay the Plaintiff the sum of Kshs.942,978,393 together with accrued interest at 22% from 31st December 2015 until payment in full.

Irregular loans disbursed on 30th December 2015 to 5th Defendant (formerly

known as Camelia Investments Limited)

136. The Plaintiff has established that a total of USD 4,720,000 was disbursed as loans to the account of the 5th Defendant then known as Camelia Investments Limited and later changed to Riverside Mews Investments Limited. The Plaintiff has also established that the shareholders of the 5th Defendant are the 1st Defendant and the 2nd Defendant at the ratio of 99% and 1% respectively .
137. The Plaintiff states that the 1st and 2nd Defendants as the shareholders of the 5th Defendant an entity which had been fraudulently presented to the Plaintiff as an SPV meant to invest in properties on behalf of the Plaintiff.
138. The Plaintiff has established that the loan was granted to the 5th Defendant by the 1st, 2nd, 3rd and 4th Defendants without security approval of the Plaintiffs board and not for the benefit of the Plaintiff. The Plaintiff has also established that no single repayment has been made and the loan was never reported to Central Bank of Kenya.
139. The Plaintiff states that the 1st, 2nd, 3rd, 4th and 5th Defendants fraudulently misappropriated the above funds from the Plaintiff and are liable to pay the Plaintiff the sum of USD 4,720,000 together with accrued interest at 22% from 31st December 2015 until payment in full.
140. The Plaintiff states that it has established that through multiple breaches of the multiple negligence, gross negligence, fraud, outright theft, and breaches of the Banking Act, Central Bank of Kenya Prudential Guidelines, the Companies Act owed to the Plaintiff the 1st, 2nd, 3rd and 4th Defendants jointly and severally caused the loss of billions of shillings of the Plaintiff's assets including depositors funds.
141. The acts and omissions of the Defendants herein constitute gross breaches of

their duty of care and as a direct and proximate result of these breaches the Plaintiff suffered monumental loss of billions of shillings, comprising mainly depositors funds.

PARTICULARS OF FRAUD, MISAPPROPRIATION AND THEFT OF THE PLAINTIFF'S ASSETS & DEPOSITS BY THE 1ST, 2ND, 3RD, 4TH, 8TH, 9TH, 10TH, 19TH AND 20TH DEFENDANTS

- i. Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds for the purchase of properties.
- ii. Jointly and severally fraudulently authorizing and approving the registration of third party companies under the guise of the same being SPV's, allocating to themselves majority shareholding in the said companies for the sole purpose of utilizing these companies to hold property purchased using funds misappropriated from the Plaintiff's funds and or deposits, with the sole intention to defraud the Plaintiff.
- iii. Jointly and severally misappropriating the Plaintiff's funds and or deposits, for the purchase of properties, and thereafter with the intention to defraud the Plaintiff, causing the said properties to be registered in the names of third party companies, being purported SPV's which companies are wholly, or substantially owned by the 1st and 2nd Defendants for their sole benefit, to the exclusion of the Plaintiff.
- iv. Jointly and severally colluding not to report to the board, the fraudulent withdrawal, disbursement and utilization of the Plaintiff's funds, despite some amounts involved being in excess of **KES100 Million** which requires approval of the Board Credit Committee in accordance with the relevant

Bank Credit Policy.

- v. Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds, from its CBK Settlement account for the 1st Defendant's personal expenses totaling to **KES2,205,642,136** which was fraudulently utilized as follows;-
- i) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES48,401,604.30** paid out to for the proposed Iman Bank of Somalia, for the benefit of the 1st Defendant.
 - ii) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES 100,000,000** to Rivières Finance Ltd ("Rivières"), a company with the 1st Defendant as the majority shareholder.
 - iii) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES 161,421,825** to Genghis Capital, transferred from the CBK Settlement account
 - iv) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES 252,784,444** transferred to Orchid Capital and or Ava Trade Ltd from the CBK Settlement account, for the benefit of the 1st and 2nd Defendants.
 - v) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to

KES 54,000,000 transferred to Sema Mobile Services Ltd from the CBK Settlement account, for the benefit of the 1st and 2nd Defendants.

- vi) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES 29,123,765** transferred to Chiggle Mobile Services Ltd, for the benefit of the 1st and 2nd Defendants.
- vii) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES 507,910,500** being 1st Defendant's other personal withdrawals and expenses.
- viii) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **KES 225,399,000** paid to AMB Real Estate Ltd ("AMB"), from the CBK Settlement account for the benefit of the 1st Defendants.
- ix) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **USD 617,551.33** paid AMB Real Estate Ltd ("AMB"), from the CBK Settlement account for the benefit of the 1st Defendants.
- x) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **USD 455,000** for the purchase of a 'Ferrari Dino' registered in the name of Ms. Shehla Khan, the 1st Defendant's wife.
- xi) Jointly and severally fraudulently authorizing, the withdrawal,

disbursement and utilization of the Plaintiff's funds transferred to Shehla Khan amounting to **USD 35 000** for "upkeep" as well as other transfers to her bank account.

- xii) Jointly and severally fraudulently authorizing, the withdrawal, disbursement and utilization of the Plaintiff's funds amounting to **USD 127,551.33** paid to Blasius Chevrolet Cadillac Inc for the purchase of a Limited Edition Corvette registered in the name of Ms. Shehla Khan, the 1st Defendant's wife.
- xiii) Jointly and severally of the 1st, 2nd & 4th Defendants fraudulently paid out **USD 756,990** consultancy fees from the Plaintiff and received by the 1st Defendant as the same was paid fraudulently and without the Plaintiff's Board approval .
- xiv) Jointly and severally on 14th May 2015, authorizing a performance based bonus payment of **KES 1,052,000,000** to the 1st Defendant, payable over a five-year period in equal installments. Despite the resolution that the same be paid over a period of five years, the payments were made over a period of one and a half (1¹/₂) months.
- xv) Jointly and severally the 1st, 2nd, 3rd and 4th Defendants utilizing the Development Bank of Kenya Limited account as a special vehicle to fraudulently syphon funds from the Bank.
- xvi) Fraudulently using the Plaintiffs CBK Settlement Account in place of customers account to divert funds from the Plaintiff.
- xvii) The 1st and 2nd Defendants being shareholders of the 13th Defendant fraudulently syphoned **Kshs.942,978,393** from the Plaintiff.
- xviii) The 1st and 2nd Defendants being shareholders of the 5th Defendant fraudulently syphoned **USD 4,720,000** from the Plaintiff.

xix) The 1st, 2nd, 3rd and 4th Defendants fraudulently authorized and approved irregular and undisclosed loans disbursed from the Plaintiff.

142. In the premises the Plaintiff is entitled at common law and/or in equity to trace and recover from the Defendants herein in so far as they remain in possession of such money or assets, all money misappropriated and/or stolen and/or defrauded from the Defendants as set out hereinabove, or assets acquired directly or indirectly with such money.
143. Further the Defendants hold on constructive trust for the Plaintiff all the money misappropriated from the Plaintiff or any assets acquired directly or indirectly with such money and the Defendants are all liable to account to the Plaintiff for all such money or assets.
144. In the premises the Defendants herein are liable to deliver up all property in their possession derived directly or indirectly from money misappropriated from the Plaintiff.
145. The Plaintiff is apprehensive that the Defendants herein will transfer their assets from the jurisdiction of this Honourable Court unless they are restrained and/or barred from removing from this jurisdiction, disposing of, mortgaging (and/or further mortgaging), charging (and/or further charging), assigning, diminishing, transferring, disposing, alienating, operating and/or otherwise interfering with any of their assets within this jurisdiction.
146. The Plaintiff owes a duty to its customers and/or depositors which said overriding duty will be defeated if the monies illegally transferred and/or withdrawn by the Defendants cannot be recovered with the aid of the Court.

147. The Defendants fraudulent actions have already caused hardship, loss and damage to the depositors, bond holders and the public severely who all stand to suffer irreparable damage should the amount the amount not be recovered forthwith.
148. The Plaintiff will seek an order as against all the Defendants compelling them to disclose a list of all their assets (movable and immovable) which includes and will not be limited to an order directing them to furnish with the aid of their Bankers all their statements for the period between 2010 and 2016 so as to allow the Plaintiff to trace and recover any assets acquired/purchased with the Bank's money.
149. The cause of action arose within the jurisdiction of this Honourable Court.
150. There are no other suits which have been instituted and/or pending in any other court relating to the parties herein and/or their agents or representatives touching on the same subject matter of this suit.

REASONS WHEREFORE the Plaintiff prays judgment against the Defendants jointly and severally for:-

- a) A declaration that the Defendants and each of them hold on constructive trust for the Plaintiff or liable to account for all assets now or previously in their possession acquired directly or indirectly with the Plaintiff's money.
- b) A declaration that the 1st to the 4th Defendants are liable to account to the Plaintiff for an amount in excess of sum of **KES.4,441,134,583** and **USD 18,219,920.33**.
- c) An order that the 1st to the 4th Defendants do pay the Plaintiff the sum of **KES**

2,205,642,136 being expenses and withdrawals by and/or in favour of the 1st Defendant.

- d) An order that 1st to the 4th Defendants do pay and/or refund **USD 756,990** being consultancy fees fraudulently paid out from the Plaintiff, without the Plaintiff's board approval and received by the 1st Defendant.
- e) An Order that the 1st to the 4th Defendants do pay **KES.1,292,514,054, USD 12,762,379** being the difference between the amounts confirmed by Development Bank of Kenya and the amounts recorded in the Plaintiff GLs.
- f) An order that the 1st to the 5th and 12th Defendants do pay **KES.942,978,393** being the loan outstanding on account of the 12th Defendant as at 31st December 2015.
- g) An order that the 1st to the 5th Defendants do pay USD 4,720,000 being the loan outstanding on account of the 5th Defendant as at 31st December 2015.
- h) An Order that the 1st to the 4th Defendants do account for every transaction undertaken in the aforesaid Development Bank account and the corresponding Plaintiffs Bank account.
- i) An Order that accounts be taken on all the Plaintiffs accounts used by the 1st to the 4th Defendants to defraud the Plaintiff.
- j) An Order that the Defendants, jointly and severally do deliver to the Plaintiff, the document of title, in respect of the following properties, and duly executed share transfer instruments to the following companies, in favour of the Plaintiff;

Registered Owner	Property (L.R No)
Riverside Mews Ltd	4275/13- Riverside office block
(the 5 th Defendant)	205/52- One Riverside Apartment 6A

	English Point Marina Apartment D01 1946 / 796& 792- Voi plots Ukunda Mosque plot
Nine Fifty Ltd (the 12 th Defendant)	Kwale/Diani Complex/718, 719 & 720
Rinascimento Ltd (now known as the 11 th Defendant)	Nyandarua agricultural plots
Boulevard Properties (the 16 th Defendant)	Kwale/GaluKinondu/661 – Villa No. 5 Lantana Kiambu/Mun. Block III 28 & III 29 (Runda Properties) Kwale/Shimoni/299
PEP Ltd	LR 21834 in Karen- The Watermark
Friends Property Holdings (the 17 th Defendant)	Noonkopir/223
Seven Forty Investments (the 18 th Defendant)	LR 21103/1 Edenville (11 Houses)

- k) Order the Defendants to deliver to the Plaintiff, duly executed instruments of transfer of all their shares in tabulated companies;

Company	Shareholders
Mathatani Limited (the 14 th Defendant)	Zafrullah Khan 90%; Duncan Kabui 10%
Riverside Mews Limited (the 13 th Defendant)	Riverside Mews Investments Limited 99%; Zafrullah Khan 1%
Nine Fifty Limited (the 12 th Defendant)	Riverside Mews Investments Limited 90%; Duncan Kabui 10%

The Lighthouse Property Company Limited (the 15 th Defendant)	Rinascimento Global Limited 99%; Ken Obimbo 1%
Rinascimento Properties Limited (the 11 th Defendant)	Riverside Mews Investments Limited 90%; Duncan Kabui 10%
Riverside Mews Investments Limited (formerly Camelia Investment Limited) (the 5 th Defendant)	Zafrullah Khan 99%; Duncan Kabui 1%
Friends Property Company Limited (the 17 th Defendant)	The Lighthouse Property Company Limited 99%; Ali Cheema 1%
Boulevard Properties Limited	Genghis Capital Limited 99%; Ali Cheema 1%
Rinascimento Global Limited (Mauritius) (the 6 th Defendant)	Zafrullah Khan 31.1%; Ken Obimbo 13.3%; Daniel Mavindu 0.7%; Ali Cheema 18.9%; Duncan Kabui 24.6%; Zafrullah Khan & Duncan Kabui 11.4%

- l) Interest at commercial rates of 22% per annum on (c) to (g) above from 31st December 2015 until payment in full.
- m) An order lifting the corporate veil of the 5th, 6th, 7th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 18th Defendants.
- n) An order directing that the Defendants do render an account of all the sums they illegally and/or irregularly obtained from the Plaintiff.

- o) An order compelling the Defendants to furnish and/or direct all their Bankers to furnish comprehensive bank statements of their various bank accounts for the period between 2010 to 2016.
- p) An order compelling the Defendants to provide a full and true list of all their assets (both movable and/or immovable assets).
- q) An order compelling all assets which will be found to have been purchased and/or acquired with the Plaintiff's monies be transferred to the Plaintiff.
- r) A permanent injunction restraining each of the Defendants by themselves and/or their agents or otherwise howsoever from:-
 - i) Disposing of the assets referred to in prayer (a) hereinabove otherwise than by delivery up or transfer to the Plaintiff: and
 - ii) Operating their bank accounts.
- s) An order for discovery and disclosure of the Defendants assets which the Plaintiff states were unlawfully and fraudulently acquired from the Plaintiff.
- t) Costs of this suit.
- u) Any other or further relief that the Honourable Court may deem just and fit to grant.

DATED at **NAIROBI** this.....day
of.....2017

AMOLO AND GACOKA
ADVOCATES FOR THE PLAINTIFF

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- (Ref: A&G/TC/9590)

TO BE SERVED ON:-

1. ZAFRULLAH KHAN
2. DUNCAN KABUI
3. MAKARIOSAGUMBI
4. JAMES MWAURA
5. RIVERSIDE MEWS INVESTMENTS LIMITED
6. RINASCIMENTO GLOBAL LIMITED
7. GENGHIS CAPITAL LIMITED
8. KEN OBIMBO
9. DANIEL MAVINDU
10. ALI CHEEMA
11. RINASCIMENTO PROPERTIES LIMITED
12. NINE FIFTY LIMITED
13. RIVERSIDE MEWS LIMITED
14. MATHATANI LIMITED
15. THE LIGHTHOUSE PROPERTY COMPANY LIMITED
16. BOULEVARD PROPERTIES LIMITED
17. FRIENDS PROPERTY HOLDINGS LIMITED
18. SEVEN FORTY INVESTMENTS LIMITED
19. ANTHONY F. GROSS
20. RUTH MUTHONI