A Financier Holding Securities (E.g., Debentures or Charges) is Not Required to Register Fresh Securities for Subsequent Advances if the Existing Securities Remain Valid and Undischarged

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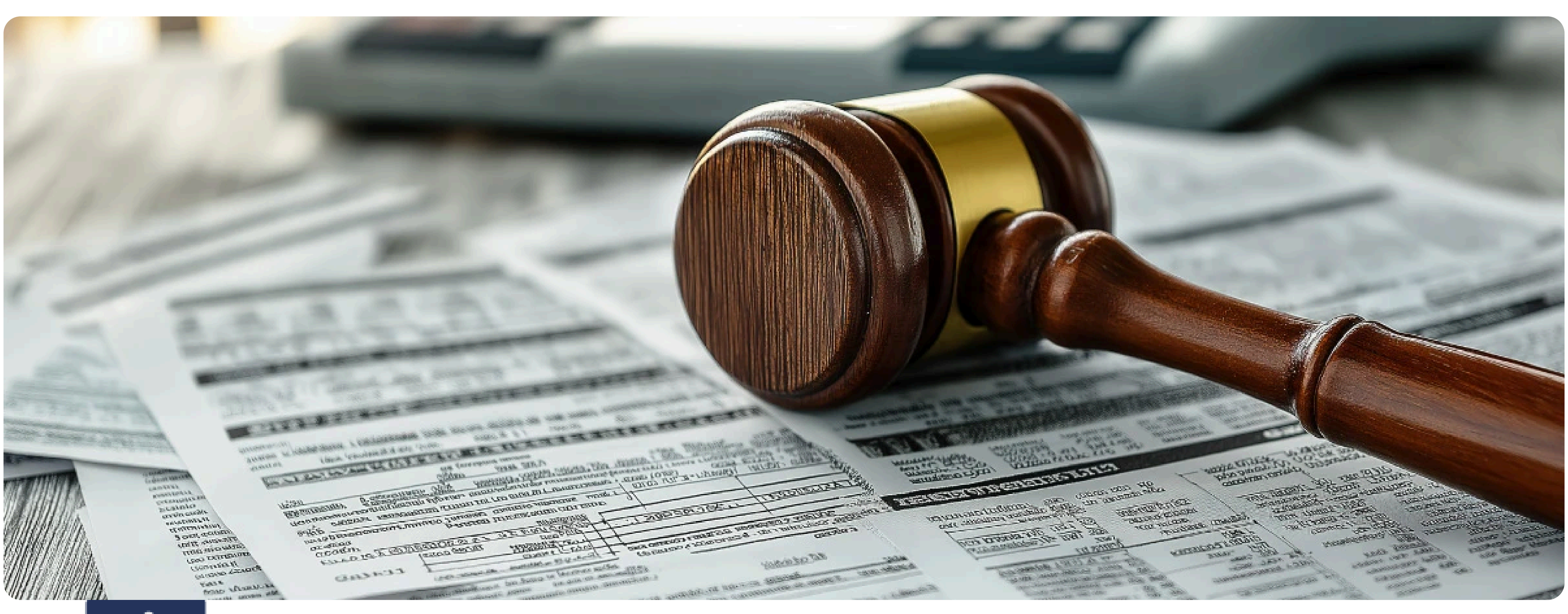

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86….Unless discharged in accordance with the law, securities remain valid, binding, and enforceable to secure subsequent obligations. To hold otherwise, as did the Court of Appeal would not only run contrary to express statutory provisions which preserve the validity of continuing securities, but would also impose unwarranted procedural burdens upon financiers, requiring fresh securities for each advance, irrespective of the subsistence of instruments. A debt being a legal obligation binds the borrower to make repayment in accordance with the terms agreed upon with the lender. The only way of getting out of indebtedness is for the borrower, if he desires to redeem the securities, to pay the principal debt, the interest thereon, all proper costs, charges, and expenses incurred by the lender in relation to the debt. There is no shortcut. Even after settling the debt fully, that fact must be registered. In the present appeal, the parties did not contemplate or intend a re-execution of fresh securities after the Eurocurrency loan was settled. Rather, the debenture was intended to be, and indeed operated as, a continuing security, extending to and encompassing local currency loan.

Supreme Court of Kenya in Standard Chartered Financial Services Limited v Manchester Outfitters (Suiting Division) Limited Now Called King Woolen Mills Limited & 2 others (Petition E012 of 2024) [2025] KESC 68 (KLR) (14 November 2025) (Judgment)

Introduction

In April 1982, Manchester Outfitters took a Eurocurrency loan guaranteed by Standard Chartered Financial Services. To protect itself, the lender secured its guarantee with a debenture, comprising a specific charge over its immovable property and a floating charge over its other assets. The document was standard for its time, broad in scope, and contained clauses stating it was a **"continuing security"** for all sums owed.

Four years later, global currency pressures pushed the parties to restructure the debt into a Kshs.9 Million facility. That shift appeared simple, yet it introduced the question that would dominate the litigation: did the original 1982 debenture continue to secure the restructured loan, or did the bank need fresh documentation under Kenyan law?

Manchester Outfitters defaulted in 1989. Standard Chartered responded by appointing receivers under the powers in the 1982 debenture. The linen maker went to court immediately, insisting the security had "fallen away" after the restructuring and that the receivership was unlawful. The bank counterclaimed for the outstanding balance, maintaining the debenture was a continuing security. With that, the dispute entered the High Court.

In 1999, the High Court ruled unambiguously for Standard Chartered. Justice Githinji affirmed that the 1982 debenture remained valid, the receivership was lawful, and Manchester Outfitters owed the bank more than Kshs.24.8 Million plus interest. It was a complete victory for the lender.

But within three years, the Court of Appeal overturned the High Court judgement holding that held that the 1986 loan was a new facility requiring fresh security, declared the receivership unlawful, and awarded Manchester approximately Kshs.251 Million in damages.

For over a decade, this was the final word, and the decision became the authoritative precedent on security registration.

Yet the case refused to rest. In an unprecedented move, the Court of Appeal agreed in 2014 to reopen its own 2002 judgment under the doctrine of residual jurisdiction. The court cited the profound public importance of the issues and a critical procedural flaw: a key volume of the trial record was missing. In 2016, it formally vacated its earlier ruling.

When reheard in 2022, the Court of Appeal sided with Manchester Outfitters again. But in doing so, it certified the matter for appeal to the Supreme Court, setting the stage for the final chapter.

Proceedings at the Supreme Court

The Supreme Court framed its judgment around two questions central to Kenyan lending.

a. Whether a financier holding securities in a charge or debenture is required to register fresh securities whenever a subsequent advance is made, even if the securities for the previous advances have not been discharged.

b. Whether there is a correlation between a security instrument drawn in favour of a lending institution and the right of recovery under a facility advanced by the same institution, particularly whether a borrowing that has not been secured discharges a borrower from its obligation to repay a loan.

The Supreme Court delivered a final judgment that reinstated the earliest the 1999 High Court judgment affirming the validity of the debenture and legal charge as continuing securities for the loan. The Court was emphatic that a financier need not register fresh securities for a new advance, provided the original security is a **'continuing security'**, like the 1982 debenture, with its clear clauses covering 'all sums due', and remains formally undischarged. The Court thus held that the 1986 facility letter did not void this security.

Secondly, the Court affirmed that **even if the security had failed, the underlying debt obligation remained** and a borrower cannot thus escape repayment simply because a security is defective. The Court clarified that the obligation to repay a loan exists independently of whether the loan is secured. Security instruments are ancillary and provide additional protection to the lender but do not discharge the borrower's obligation to repay the loan.

Applying these principles, the Court ruled the 1982 debenture always secured the loan, the receivers were lawfully appointed, and Manchester Outfitters remained liable for the Kshs.24.8 Million debt.

What is the significance of the Supreme Court Judgement?

The Supreme Court Judgement is significant for several reasons:

a. **Clarification on Continuing Securities:** The Court established that a financier holding securities (e.g., debentures or charges) is not required to register fresh securities for subsequent advances if the existing securities remain valid and undischarged. This provides clarity and consistency in banking and financial practices, ensuring that lenders can rely on previously executed securities without the need for re-registration. This position has previously been confirmed by the Court of Appeal in the case of **Mwambeja Ranching Company Limited & another v Kenya National Capital Corporation [2019] KECA 436 (KLR)** where the court held:

> *"It is trite law that as long as a contract is tied to a legal charge there is a continuing security; until the debt is paid and until the security is discharged, none of the parties can claim a cause of action based on a charge to be time barred. A cause of action under a continuing security never dies or lapses."*

b. **Reaffirmation of Borrower's Obligation to Repay Loans:** The Court emphasized that the obligation to repay a loan exists independently of whether the loan is secured. Borrowers cannot evade repayment simply because a loan is unsecured or the security is defective. This prevents unjust enrichment and ensures accountability in financial transactions

c. **Protection of Lenders' Rights:** The ruling protects lenders from the impractical burden of re-executing securities for every new advance, which could disrupt the banking sector. It reinforces the principle that securities remain enforceable until formally discharged.

d. **Resolution of Legal Uncertainty:** The Court addressed conflicting judicial precedents regarding the treatment of continuing securities, providing authoritative guidance on the matter. This decision will serve as a precedent for future cases involving similar disputes.

e. **Impact on Commercial Transactions:** The judgment promotes certainty and predictability in financial and commercial transactions, ensuring that lenders and borrowers understand their rights and obligations under security instruments and loan agreements.

f. **Prevention of Unjust Enrichment:** By reinstating the High Court's judgment, the Court prevented Manchester Outfitters from unjustly retaining both the loan amount and the securities without repayment, upholding fairness in financial dealings.

g. **Judicial Efficiency:** The ruling underscores the importance of adhering to the certification process under Article 163(4)(b) of the Constitution, ensuring that appeals to the Supreme Court focus solely on matters of general public importance.

What duties do Receivers and Managers owe to Companies and Creditors?

Receivers and managers owe several duties to respondents (the company and its stakeholders) under Kenyan law and general principles of equity. These duties are primarily aimed at ensuring fairness, accountability, and the protection of the interests of all parties involved. Based on the document provided, the Supreme Court addressed the conduct of the 3rd Respondent (the receiver/manager) and outlined the following key duties:

a. **Duty of Care:** Receivers and managers must act with reasonable care and diligence in managing the assets and affairs of the company under receivership. In this case, the Supreme Court found that the 3rd Respondent acted appropriately by allowing the Manchester Outfitter's factory to operate for a period before closing it down due to insolvency, lack of market demand, and refusal by Kenya Commercial Bank (KCB) to inject further capital.

b. **Duty to Act in Good Faith:** Receivers and managers must act in good faith and in the best interests of the company and its creditors. The 1st and 2nd Respondents alleged that the appointment of the 3rd Respondent was malicious and in bad faith, but the Supreme Court found no evidence of malice or wrongful acts by the 3rd Respondent.

c. **Duty to Comply with Court Orders:** Receivers and managers must adhere to any court orders issued during the receivership process. The Supreme Court noted that the 3rd Respondent complied with interlocutory orders issued by the High Court and handed over the property to the 1st Respondent when required.

d. **Duty to Protect and Preserve Assets:** Receivers and managers are responsible for safeguarding the company's assets and ensuring they are not wasted, misused, or lost. In this case, the Supreme Court found that the Receiver acted prudently by closing the factory and attempting to sell it as a going concern, given the 1st Respondent's insolvency and lack of market for its products.

In conclusion, the Supreme Court determined that the Receiver had not committed any wrongful acts or misconduct. The Court found that the Receiver acted within the scope of their appointment, complied with court orders, and made sound decisions in managing the 1st Respondent's assets, including closing the factory due to insolvency and lack of market demand. Therefore, the 1st and 2nd Respondents claims against the 3rd Respondent (Receiver) were dismissed.

Conclusion

In summary, the ruling strengthens the legal framework for financial transactions, protects lenders' rights, and ensures borrowers fulfil their repayment obligations, while providing clarity on the treatment of continuing securities in Kenya.