

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. E189 OF 2022

LIBERTY AFRIKA TECHNOLOGIES LTDPLAINTIFF

-VERSUS-

JOSEPH KIMATHI NJAGIH.....DEFENDANT

PLAINT
(FAST TRACK)

1. The Plaintiff is a limited liability Company duly incorporated and registered pursuant to the provisions of the Companies Act, and having its registered office and principal place of business within Nairobi County in the Republic of Kenya. Its address for service for the purposes of this suit is in the care of **Kiingati Ndirangu & Associates Advocates, Design Centre, 4th Floor, Office suite no. 4B, Tausi Road off Muthithi Road, Westlands, P.O. Box 18677- 00100, Nairobi.**
2. The Defendant is a male adult of sound mind residing and working for gain within Nairobi County in the Republic of Kenya (**Service of Summons shall be effected through the offices of the Plaintiff's Advocates herein**).
3. By a Credit Agreement 10th December, 2021 the Plaintiff agreed to advance the Defendant a sum of Kshs. 2,000,000/=.
4. It was a term of the agreement that the defendant would repay the loan amount in full or before 28th February, 2022.

5. It was a further term in the agreement that if the Defendant failed to repay the loan amount in full by the 28th February, 2022 then amount would attract interest at the rate of 3.75% per month on a reducing balance.
6. The Plaintiff advanced the Defendant the said sum of Kes. 2,000,000/= in accordance with the Credit Agreement but the Defendant failed to repay the said amount by the 28th February, 2022.
7. On or about the 21st July 2022 the Plaintiff and the Defendant entered into an addendum to the Credit Agreement allowing the Defendant to repay the debt and interest in monthly instalments of Kes. 200,000/= per month with effect from 6th November, 2022.
8. The Plaintiff avers that the Defendant has failed and or refused to repay the debt plus interest.
9. The Plaintiff's claim is for the principal sum of Kes. 2,000,000/= plus interest of Kes. 600,000/= as at 11th November, 2022 and further interest at the rate of 3.75% per month until payment in full.
10. Demand has been made and notice of intention to sue given but the Defendant has failed and/or refused to pay thus necessitating this suit.
11. There is no other suit pending between the parties herein, neither has there been any past nor previous proceedings between the Plaintiff and the Defendant in any other court over the same subject matter and the cause of action relates to the Plaintiff named in the Plaint.
12. The cause of action arose in Nairobi within the Honourable Court's jurisdiction.

REASONS WHEREOF the Plaintiff prays for judgment against the Defendant for:

- a) The sum of Kshs 2,000,000/= being the principal amount;

- b) Kes. 600,000/= being interest from 1st March, 2022 to 31st October, 2022;
- c) Further interest at the rate of 3.75% per month from 1st November, 2022 until payment in full.
- d) Costs of the suit and interest at court rates..

DATED at **NAIROBI** this 11th day of November , 2022.


KIINGATI NDIRANGU & ASSO.,
ADVOCATES FOR THE PLAINTIFF

DRAWN AND FILED BY:

Kiingati Ndirangu & Associates,

Advocates,

Design Centre, 4th Floor, Office suite number 4B,

Tausi Road off Muthithi Road, Westlands,

P.O. BOX 18677- 00100,

NAIROBI.

Email address: info@knlawkenya.co.ke / ruth@knlawkenya.co.ke

Tel: 020 253 4201/0754 973 375

TO BE SERVED UPON:

Joseph Kimani Njagih

P.O Box 35515-00100

NAIROBI.

Email: josephnjagih@gmail.com

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IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
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JOSEPH KIMATHI NJAGIH.....DEFENDANT

VERIFYING AFFIDAVIT

I, **SIDNEY NGUNYI WACHIRA**, of Post Office Box Number 20000 - 00100, Nairobi in the Republic of Kenya do hereby make oath and state as follows: -

1. THAT I am the Director of the Plaintiff Company and have the authority of the Plaintiff to make and swear this affidavit.
2. THAT I have read, understood and do confirm that the averments pleaded in the Plaintiff filed herewith are true and correct.
3. THAT the facts deposed to hereinabove are true to the best of my knowledge.

SWORN at NAIROBI by the said }
SIDNEY NGUNYI WACHIRA }
This 11th day of November 2022 }


*.....
DEPONENT

BEFORE ME: - 
COMMISSIONER FOR OATHS }

DRAWN AND FILED BY:

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Advocates,

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PLAINTIFF'S LIST OF WITNESSES

1. Sidney Ngunyi Wachira.
2. Others to be called with leave of court at the hearing.

DATED at NAIROBI this 11th day of November, 2022.


KIINGATI NDIRANGU & ASSO.,
ADVOCATES FOR THE PLAINTIFF

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P.O Box 35515-00100
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Email: josephnjagih@gmail.com

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WITNESS STATEMENT BY SIDNEY WACHIRA

1. My name is **SIDNEY NGUNYI WACHIRA** I am a Director of the Plaintiff. I am well versed with facts of this case and I have the authority to make this statement and to perform all necessary actions in pursuit of the claim herein on behalf of the Plaintiff. **(See appendix 1 of the Plaintiff's List and Bundle of Documents filed herewith).**
2. On the 10th of December, 2021, the Plaintiff got into a Credit Agreement with the Defendant for the advancement of a loan of Kshs. 2,000,000. **(See appendix 2 of the Plaintiff's List and Bundle of Documents filed herewith).**
3. The terms of the agreement were that the defendant would repay the loan as a lump sum amount on or before 28th February, 2022.
4. It was a further term in the agreement that if the Defendant failed to repay the loan amount when it is due, it would attract an interest rate of 3.75% per month on the reducing balance.
5. Pursuant to the said agreement the Plaintiff paid the said sum of Kshs. 2,000,000 to the Defendant on 10th December, 2022 in cash.
6. The loan was to be repaid in full on the 28th of February 2022. The Defendant has not made any payment whatsoever in a bid to settle the said loan.

7. The Agreement provided that should the defendant default in the payment of the loan on the due date, he should pay the outstanding amount alongside an interest rate of 3.75% per month on the reducing balance which accrues from the 28th of February, 2022, the date when the Defendant was supposed to repay the loan.
8. After pushing the Defendant to settle the amount through text messages and the Defendant making various promises to pay the Defendant has failed to pay. As a result through our advocates on record we issued with a demand and notice of intention to sue but the Defendant has remained adamant and refused, neglected, ignored and/or otherwise failed to repay the loan of Kshs. 2,000,000/= as the principal amount together with interest thus necessitating this suit. **(See appendix 3 and 4 of the Plaintiff's List and Bundle of Documents filed herewith being the txt messages and demand letter dated 6th May 2022).**
9. The Plaintiff acting in good faith engaged in negotiations with the Defendant sometimes in May 2022 with the aim to agree on modalities by which the Defendant would pay the loan amount.
10. Pursuant to the negotiations and in consonance with clause 7 of the Agreement, the Plaintiff and Defendant made an addendum dated 21st July 2022 (hereinafter "**the addendum**") to the agreement. **(See appendix 5 of the Plaintiff's List and Bundle of Documents being the addendum dated 21st July 2022).**
11. It was a term of the addendum that the Defendant will repay the loan amount in instalments of Kshs. 200,000 per month until full payment as from 6th November 2022.
12. In blatant breach of both terms of the addendum and the agreement, the Plaintiff has failed and or neglected to pay the loan amount of Kshs. 2,000,000.

12. The Plaintiffs' Advocates served the Defendant with a further demand and notice of intention to sue dated 7th November, 2022 but in spite of this the Defendant has failed and or refused to pay. (See appendix 6 of the Plaintiff's List and Bundle of documents being the demand letter dated 7th November 2022)

13. I pray that this court grants judgment in favour of the Plaintiff against the Defendant as prayed for in the plaint.

DATED at NAIROBI this 11th day of November, 2022.



SIDNEY NGUNYI WACHIRA

DRAWN AND FILED BY:

Kiingati Ndirangu & Associates,

Advocates,

Design Centre, 4th Floor, Office suite number 4B,

Tausi Road off Muthithi Road, Westlands,

P.O. Box 18677- 00100,

NAIROBI.

Email address: info@knlawkenya.co.ke / ruth@knlawkenya.co.ke

Tel: 020 253 4201/0754 973 375

TO BE SERVED UPON:

Joseph Kimani Njagih

P.O. Box 35515-00100

NAIROBI.

Email: josephnjagih@gmail.com

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PLAINTIFF'S LIST OF DOCUMENTS

APPENDIX	PARTICULARS	DATE
1.	Authority to sue and act for Plaintiff	8/11/2022
2.	Credit Agreement	10/12/2022
3.	Extract of text messages	Various
4.	Demand letter	6/5/2022
5.	Addendum	21/7/2022
6.	Demand letter from the Plaintiff's Advocate	07/11/2022

DATED at NAIROBI this 11th day of November, 2022.


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ADVOCATES FOR THE PLAINTIFF

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Email: josephnjagih@gmail.com

**EXTRACTS OF THE MINUTES FOR LIBERTY AFRIKA TECHNOLOGIES
LIMITED HELD AT THE COMPANY'S OFFICE ON 8TH NOVEMBER, 2022**

MINUTE 4 debt owed to Liberty by JOSEPH KIMATHI NJAGIH

The members unanimously resolved that legal action be taken against Joseph Kimathi Njagih to recover the debt plus interest.

Sidney Wachira is authorized to sign all necessary papers in this regard and to represent the company, attend court and do all other necessary actions to recover the debt.

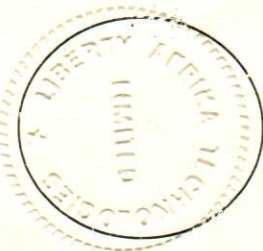
Signed by

Director.....

Dated... 11. Nov. 2022

Director/Secretary.....

Dated... 11/11/2022



APPENDIX 2



CREDIT TERMS AND CONDITIONS

1. Interpretation

- 1.1. **"Agreement"** shall mean this agreement including the Schedules hereto and terms of the letter of offer that are not inconsistent with this presents.
- 1.2. **"Borrower"** shall mean **Joseph Kimathi Njagih.**
- 1.3. **"Lender"** shall mean **Liberty Afrika Technologies Limited.**
- 1.4. **"Loan"** shall mean all amounts advanced to the Borrower by the Lender including but not limited to interest, costs of preparation of this agreement, legal costs and all costs incidental to the advancement and recovery of any sum that may be due or subject of this agreement.
- 1.5. **"Parties"** shall mean the Lender and the Borrower jointly.
- 1.6. **"Party"** shall, as the context requires, be a reference to either the Lender or the Borrower.

2. WHEREAS

- A. The Borrower has request for a loan of **Kenya Shillings Two Million Shillings. (Kshs. 2,000,000/-)** only from the Lender;
- B. The Lender has agreed to advance a loan to the Borrower subject to the terms and conditions set out in the agreement.

3. Terms and Conditions

- 3.1. The Borrower shall repay the loan as a lump sum amount on or before the 28th February, 2022.
- 3.2. If the Lender fails to repay the amount in full the Loan shall accrue interest at the rate of 3.75% (Three Decimal Seven Five Percent) per month on reducing balance.
- 3.3. The loan will be recovered from direct payments by the Borrower or through services to be rendered to the Lender by the Borrower on terms to be agreed on.

4. COVENANT TO PAY INTEREST

The Borrower hereby agrees with the Lender that the rate of interest applicable on all moneys hereby secured shall be determined as follows: -

- 4.1. Until service of such a notice as is hereinafter referred to (or as otherwise provided) interest shall be at the rate of **Three Decimal Seven Five percent (3.75%) per month on reducing balance;**
- 4.2. The Lender reserves the right to vary the rate of interest and may from time to time serve on the Borrower notice forthwith requiring payment of interest at such increased or reduced rate as shall in the decision of the Lender fairly represent the rate of interest commonly chargeable in Kenya having regard to such circumstances as the Lender considers to be relevant and the decision of the Lender in this behalf shall not be questioned on any account whatsoever;
- 4.3. In the event of the Lender requiring a variation in the rate of interest the Lender will notify the Borrower of the amount of the resulting increased or decreased monthly installments payable and the first of such increased or decreased monthly installments shall become due and payable on the first day of the month next after notification of the amount thereof to the Lender;

A handwritten signature in blue ink, appearing to be 'JN', is located in the bottom right corner of the page.

A handwritten signature in blue ink, appearing to be 'JN', is located in the bottom right corner of the page.

- 4.4. The interest payable by the Borrower shall be calculated on the amount for the time being outstanding hereunder (whether principal or interest) by the Borrower to the Lender on a reducing balance basis with monthly rests and it is agreed that no part of any payment made by the Borrower to the Lender shall be treated as being a payment on account of principal amount unless all interest due or deemed to be due or accrued has been paid;
- 4.5. If any amount (including interest) required by this agreement to be paid shall not be paid by the day on which the same shall have become payable then without prejudice to any or all of the rights and remedies accruing to the lender consequent on such default and without rendering such amount other than overdue and immediately payable without demand the amount so in arrears shall henceforth itself bear interest ("default interest") at the rate of **Three Decimal Seven Five percent per month on reducing balance** and default interest shall be computed from the date the same become payable (as well after as before any demand or judgement or the liquidation or bankruptcy or insolvency of the Borrowers) to the date on which such outstanding payment or payments together with the default interest is in fact paid and may at the sole discretion of the Lender be at any time capitalized and added for all purposes to the Loan or so much thereof as shall remain unpaid AND the Borrowers acknowledge and agree with the Lender that the said margin or the default interest represent a reasonable or genuine pre-estimate of the loss to be suffered by the Lender in funding the default of the Borrower and the Borrower also agree that the said margin may be reviewed by the Lender to a higher or lower rate should the Lender so decide (having regard to all the circumstances the Lender shall deem appropriate) and the decision of the Lender shall not be questioned on any account whatsoever;
- 4.6. All overdue interest whether capitalized or not and the interest thereon shall be secured in the same manner as the Loan and all the covenants and provisions contained in this agreement and laws of Kenya and all powers and remedies conferred by law and all rules of law or equity in relation to the Loan and the interest thereon shall equally apply to such overdue interest whether capitalized or not and to the interest thereon;

5. Successors and Assigns

This Loan will inure to the benefit of and be binding on the respective successors and permitted assigns of the Borrower. The Borrower may not assign its rights or delegate its duties under this Loan without the Lender's prior written consent.

6. Joint and Several Liability

If there is more than one Borrower of this Loan, the obligation of each Borrower shall be joint and several under this Loan.

7. Amendment

This Loan may be amended or modified only by a written agreement signed by the Borrower and Lender.

8. Severability

In the event that any of the provisions of this Loan are held to be invalid or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Loan.



9. Notifications

Any notice or communication under this Loan must be in writing and sent via one of the following options:-

Borrower:

Joseph Kimathi Njagih
P.O. Box 35515-00100 Nairobi
Email: djosephnjagih@gmail.com

Lender:

Liberty Afrika Technologies Limited
P.O Box 20000 – 00100 Nairobi
Email Address: sidney@libertyafrika.co.ke

10. Governing Law

This Loan shall be governed by and construed in accordance with the laws of Kenya.

11. Indemnity

The Borrower shall indemnify and keep indemnified the Lender from and against any and all loss damage or liability (whether criminal or civil) suffered by the Lender resulting from a breach of this agreement by the Borrower or any of its servants or agents.

SIGNED by

By the **BORROWER**

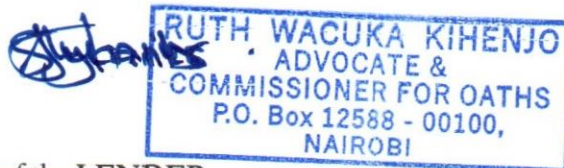
JOSEPH KIMATHI NJAGIH

ID. NUMBER: 24588324

DATE: 10th Dec, 2021

In the presence of

Advocate

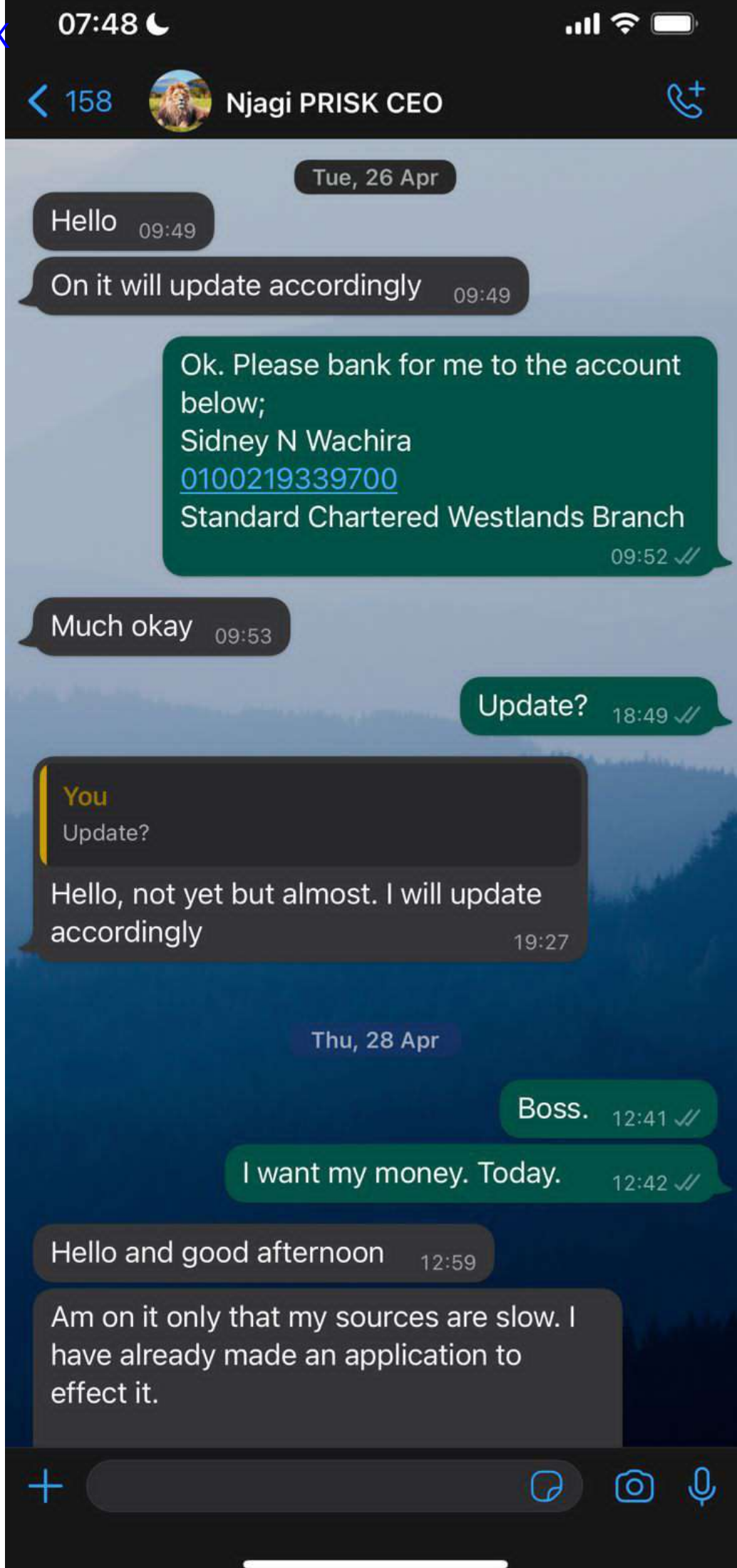


For and on behalf of the **LENDER**
LIBERTY AFRIKA TECHNOLOGIES
LIMITED

SIDNEY NGINYI WACHIRA

In the presence of

Advocate





Much okay 09:53

Update? 18:49 ✓✓

You

Update?

Hello, not yet but almost. I will update accordingly

19:27

Thu, 28 Apr

Boss. 12:41 ✓✓

I want my money. Today. 12:42 ✓✓

Hello and good afternoon 12:59

Am on it only that my sources are slow. I have already made an application to effect it.

Sorry its taking longer than expected. Very sorry

13:00

Wed, 4 May

Njagi. I would like my money as promised.

12:28 ✓✓

Hello, yes. Kindly bear with me as I fix it. I will honour as agreed.

12:31





12:16

Received 12:16 ✓✓

You

Received

Karibu 12:18

Thu, 9 Dec



CREDIT TERMS AND CONDITIONS...

3 pages • 232 KB • docx

16:17 ✓✓

Draft 1. Review and revert 16:18 ✓✓

You

Draft 1. Review and revert

Well drafted

My address

P.o Box [35515 - 00100](#) GPO

Nairobi

Email: drjosephnjagih@gmail.com 17:25

Fri, 10 Dec





Kiingati Ndirangu & Associates

Advocates, Commissioners For Oaths & Notaries Public

Paresia Center 1st Floor

Ngong Road

Next to Good Shepherd Church

P.O. Box 18677-00100

Nairobi

Tel. 2534201/0756646646

E-mail: info@knlawkenya.co.ke

APPENDIX 4

Our Ref: 2/LA/3/22

Your Ref: tba

Date: 6th May, 2022

Joseph Kimathi Njagih

NAIROBI

By email to

djosephnjagih@gmail.com; ceo@prisk.or.ke

Dear Sir,

RE: CREDIT FACILITIES OBTAINED FROM LIBERTY AFRIKA TECHNOLOGIES LIMITED

We act for Liberty Afrika Technologies Limited on whose instructions we address you as hereunder.

That you entered into a credit agreement with our client under which our client lent you a sum of Kshs. 2,000,000/= . It was a term of the agreement that you would repay the same on or before 28th February, 2022. It was a further term of the agreement that if you do not make the payment as aforesaid, the facility would attract interest at the rate of 3.75% per month on reducing balance.

Our instructions are that you have failed to repay the said loan and the same continues to accrue interest as aforesaid. Our instructions are therefore to demand the immediate payment of the sum of Kshs. 2,168,437/80 being the principal and interest up to the date hereof. The amount continues to accrue interest until payment in full.

TAKE NOTICE that unless the said amount of **Kshs. 2,168,437/80** is paid in full together with further interest accruing thereon within **SEVEN (7) DAYS** from the date hereof we have mandatory instructions to institute appropriate legal action against you without further reference to you whatsoever and at your risk as to costs and consequences attendant thereto.

Yours faithfully,

KIINGATI NDIRANGU & ASSOCIATES


KIINGATI NDIRANGU

kiingati@knlawkenya.co.ke

Client

APPENDIX 5

Liberty Afrika
technologies ltd



ADDENDUM

THIS DEED OF VARIATION is made on the 21st day of July, 2022.

~~-BETWEEN-~~

LIBERTY AFRIKA TECHNOLOGIES LIMITED, the Lender.

~~-AND-~~

JOSEPH KIMATHI NJAGIH, the Borrower.

WHEREAS:

- A. The Lender and the Borrower entered into a Credit Agreement dated the 10th of December, 2021 (hereinafter "the Credit Agreement").
- B. The Borrower received the sum of Kenya Shillings Two Million (Kes. 2,000,000/=) only (hereinafter "the Borrowed Amount") from the Lender as set out in the Credit Agreement.
- C. The Borrower has been unable to repay the Borrowed Amount in accordance with the Credit Agreement, the parties have agreed to vary the terms of the Credit Sale Agreement on terms set out hereunder.

THAT THE AGREEMENT FOR SALE IS VARIED AS FOLLOWS:-

1. The Borrower shall repay the Borrowed Amount together with interest thereon in monthly installments of Kenya Shillings Two Hundred Thousand (Kes. 200,000/=) per month with effect from 6th November, 2022, and thereafter on or before the 6th of each succeeding month until payment in full.
2. That in default the Borrower shall provide such acceptable security to the Lender for the due performance of his obligations herein without prejudice to any other legal remedy available to the Lender.
3. This Addendum shall be read and construed as an Addendum to the Credit Agreement.
4. This deed may be executed by the parties by electronic signature which shall be considered as an original for all intents and purposes and shall have the same force and effect as an original signature.
5. In the event of any conflict between the provisions of this Addendum and the Credit Agreement, the provisions of this Addendum shall prevail.

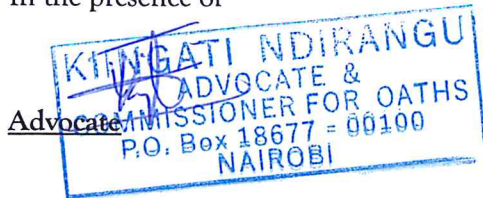
6. All other provisions of the Credit Agreement remain the same and are to be interpreted in the manner that best gives effect to this Addendum.

IN WITNESS WHEREOF the Lender and the Borrower have executed this Addendum the day and year first hereinbefore written.

SIGNED by the BORROWER]

JOSEPH KIMATHI NJAGIH]

In the presence of]



.....

CERTIFICATE

I CERTIFY that the above named JOSEPH KIMATHI NJAGIH, the Borrower appeared before me on the 21st day of July, 2022 being known to me /identified by National Id Card No. acknowledged the above signature to be his and that he had freely and voluntarily executed this instrument and understood its contents having obtained independent legal advice on the terms and contents of this Deed of Variation.

Signature and Designation of the Person certifying

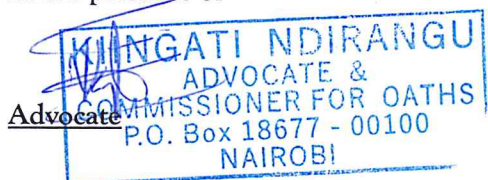
Signed for and on behalf of the LENDER]

LIBERTY AFRIKA TECHNOLOGIES]

LTD NGONYI]

SIDNEY NGONYI WACHIRA]

In the presence of]



.....

CERTIFICATE

I CERTIFY that the above named SIDNEY NGONYI WACHIRA, for the Lender appeared before me on the 21st day of July, 2022 being known to me /identified by National Id Card No. acknowledged the above signature to be his and that he had freely and voluntarily executed this instrument and understood its contents having obtained independent legal advice on the terms and contents of this Deed of Variation.

Signature and Designation of the Person certifying



Kiingati Ndirangu & Associates

Advocates, Commissioners For Oaths & Notaries Public

Paresia Center 1st Floor

Ngong Road

Next to Good Shepherd Church

P.O. Box 18677-00100

Nairobi

Tel. 2534201/0756646646

E-mail: info@knlawkenya.co.ke

APPENDIX 6

Our Ref: 2/LA/3/22

Your Ref: tba

Date: 7th November, 2022

JOSEPH KIMATHI NJAGIH
NAIROBI

By email to

djosephnjagih@gmail.com; ceo@prisk.or.ke

Dear Sir,

RE: DEBT OWED TO LIBERTY AFRIKA TECHNOLOGIES LIMITED

We have been instructed by our above named client to demand from you, which we hereby do, the immediate remittance in the sum of Kes. 2,000,000/= together with interest accruing therefrom at the rate of 3.75% per month pursuant to the Credit Agreement entered into between you and our client on dated 10th December, 2021, full particulars whereof are well known to you.

TAKE NOTICE therefore that unless the said sum of **Kenya Shillings Two Million (Kes. 2,000,000/=)** together with interest thereof as aforesaid is received by us in full within **48 hours** from the time of sending this demand we have strict and mandatory instructions to institute legal action for the recovery without any further reference to you whatsoever and at your risk as to costs and consequences attendant thereto.

Yours faithfully,

KIINGATI NDIRANGU & ASSOCIATES


KIINGATI NDIRANGU
kiingati@knlawkenya.co.ke

cc. Client