



County Government of Kajiado v Tata Chemicals Magadi Ltd; National Land Commission & 3 others (Interested Parties); Tata Chemicals Magadi Ltd (Plaintiff to the Counterclaim); County Government of Kajiado & another (Defendant to the Counterclaim) (Environment & Land Case E043 of 2023) [2025] KEELC 202 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E043 OF 2023
LC KOMINGOI, J
JANUARY 30, 2025**

BETWEEN

COUNTY GOVERNMENT OF KAJIADO PLAINTIFF

AND

TATA CHEMICALS MAGADI LTD DEFENDANT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

CHIEF LAND REGISTRAR INTERESTED PARTY

**CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND
MARITIME AFFAIRS INTERESTED PARTY**

ATTORNEY GENERAL INTERESTED PARTY

AND

TATA CHEMICALS MAGADI LTD PLAINTIFF TO THE COUNTERCLAIM

AND

**COUNTY GOVERNMENT OF KAJIADO DEFENDANT TO THE
COUNTERCLAIM**

**REGIONAL BUSINESS CONNECTION LTD DEFENDANT TO THE
COUNTERCLAIM**



RULING

1. This is the Notice of Motion dated 17th January 2024 brought under: Sections 1A, 1B and 3A of the Civil Procedure Act, Order 40 Rule 1, 2 and 4, and all other enabling provisions of Law. It seeks;
 - i. Spent.
 - ii. Spent.
 - iii. That pending hearing and determination of this suit, this Hon. Court be pleased to grant an order of injunction restraining the County Government of Kajiado and Regional Business Connection Ltd by themselves or their servants, agents and or assigns from trespassing, entering, remaining on, closing, locking, blocking or in any other manner whatsoever and howsoever interfering with any of the Applicant's premises, business operations, factories, gates and properties situated in Magadi in the County of Kajiado.
 - iv. That this Hon. Court be pleased to issue any other relief that it deems fit in the circumstances.
 - v. The costs of this application be provided for.
2. The grounds are on the face of the application and are set out in paragraphs 1 to 27. The same is supported by the affidavit of Anthony Wanjohi, the Regulatory and Treasury Manager, of the Defendant/Applicant, sworn on the 17th January 2024. He dopones that the Defendant/Applicant which is a limited company duly incorporated under the provisions of the Companies Act involved in the mining of trona and manufacturing of soda ash claims that it was granted a leasehold interest by the Government of Kenya over two parcels of land LR No. 1026/R and 3867 situated at Lake Magadi and Lake Natron vide a lease dated 20th March 1928 and a further lease dated 9th December 2004.
3. Following a dispute on whether land rates are chargeable over the suit properties and if so, which areas are applicable, the Applicant filed High Court Petition No. 2 of 2019 between itself and the Kajiado County Government (the plaintiff herein). Among the prayers sought was the quashing of the demand of alleged land rates arrears and royalties of Kshs. 17,448,485,646 as per the letter dated 14th February 2018. This Petition was heard and Judgement delivered on 3rd May 2019. The Defendant/Applicant aggrieved by this decision Appealed to the Court of Appeal in Civil Appeal No. 530 of 2019 Tata Chemicals Magadi Ltd vs Kajiado County Government. The same is pending determination.
4. Meanwhile, as directed by the High Court, the Defendant engaged parties in discussions but no agreement was arrived at. On 3rd October 2023, the Plaintiff issued to the Defendant an invoice of Kshs. 358,748,000 in respect to land rates for LR No. 2241/R 2978/1 and on 15th January 2024 the 2nd Defendant (in the counterclaim) served the Defendant/Applicant with a demand notice for the rates as per the invoice dated 3rd October 2023 and in default ordered for closure of the Defendant/Applicant's premises. On 16th January 2024, the 2nd Defendant (in the counter claim) made good their threat and shut down the Defendant/Applicant's premises.
5. The Defendant/Applicant claims that the demand notice dated 3rd October 2023 was without a legal basis and that the 2nd Defendant had no authority to close it's premises. Further, that the closure action is not one of the remedies provided for under the Rating Act or under the Kajiado County Rating Act 2016, and by the nature of the lease the 1st Defendant (in the counter claim) has no jurisdiction to shut down the Applicant's operations. The Defendant/Applicant also claims that this closure has far reaching consequences since the Company has several community outreach activities



including schools, hospitals and empowering local businesswomen, as well as generating revenue for the Government through taxes and royalties. He prays that the Application be allowed as prayed.

6. The plaintiff/1st Respondent in its Grounds of Opposition and Preliminary Objection dated 12th February 2024 as well as the Replying affidavit sworn by Veraa Moraa contested the Notice of Motion on grounds that this court lacked jurisdiction to determine that Application as per Section 6 of the *Civil procedure Act* because the Applicant's dispute is on payable rates which determination was pending before the Court of Appeal in Nairobi Civil Appeal No. 2 of 2019. The Appeal was filed by the Defendant/Applicant herein against dissatisfaction the Judgement delivered in Kajiado High Court Constitutional Petition No. 2 of 2019. The Application should therefore be dismissed with costs.
7. In a rejoinder dated 16th February 2024, also sworn by Anthony Wanjohi, the Defendant/Applicant averred that the cause of action in the Counterclaim arose from the illegal closure of it's premises by the 2nd Defendant (in the Counterclaim) on 15th and 16th of January 2024, and not based on the issue of payment of rates as stated by the Plaintiff/Respondent. It is the Defendant's position that, this Court is clothed with jurisdiction to determine the same.
8. The Notice of Motion and the Preliminary objection were canvassed together by way of written submissions.

The Defendant/Applicant's submissions

9. Counsel for the Applicant submitted that the instant application was filed together with their Counterclaim in response to the Respondent's Plaint dated 1st November 2023. Counsel submitted that the law on Preliminary Objections was settled in *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors* [1969] EA 696 which held that a Preliminary Objection should be on a point of law. However, the Respondent's objection was not a pure point of law. This is because the Respondent claims that the dispute in the counterclaim is pending before the Court of Appeal while the issue at hand is about closure of the Applicant's premises and not on payment of rates. Adding that Section 6 of the *Civil procedure Act* was on staying a suit where a similar suit was pending in the Court and there was no other pending suit regarding closure of the Applicant's premises. Adding that Section 2 defined Court as the High Court or Subordinate Court and did not include the Court of Appeal which means, Section 6 was inapplicable to it.
10. On the ground that the Court of Appeal was the proper forum to determine the issue of rates, Counsel submitted that as an Appellate Court, it did not have original jurisdiction to determine issues arising between the Applicant and the Respondent as per the Counterclaim. Counsel went on to submit that this dispute in the Counterclaim was in no way the same or identical to the Appeal. The Objection had therefore failed to raise issues of law and should be dismissed.
11. On the Notice of Motion application, counsel submitted that the application should be allowed as per the principles espoused in *Giella vs Cassman Brown* [1973] EA 358.
12. Counsel submitted that the Applicant had a prima facie case with a probability of success because the 2nd Defendant in the Counterclaim had no power to order closure of the Applicant's business as per their letter dated 15th January 2024 either under Section 22 of the Kajiado County Finance Bill 2023 or any other law. Additionally, closing down of premises was not one of the remedies outlined by Section 17 of the *Rating Act*. Counsel added that the Applicant would suffer irreparable loss unless the injunction is granted and its closure had far reaching effects such as affecting programmes carried out by the Applicant including schools, hospital, revenue brought to the County and Country as well as community run projects supported by the Applicant.



The Plaintiff/1st Respondent's submissions

13. Counsel for the Respondent submitted that the subject matter of this application was a demand notice issued by them claiming payment of outstanding payment of land rates of Kshs. 358,748,000 for the year 2023 for property LR No. 2241/R 2978/1 and subsequent closure of the Applicant's premises for failure to pay the outstanding amount. Counsel submitted that as of December 2019 the outstanding land rates as per the pleadings in Kajiado High Court Petition No. 2 of 2019 were Kshs. 17,448,485,646 and this amount was still unpaid. And following the High Court Judgement, the Applicant had appealed the decision to the Court of Appeal. Therefore, the issue of outstanding rates was pending at the Court of Appeal and it was the Court clothed with jurisdiction to determine the issue. Therefore, this Court should down its tools on the Application and Counterclaim.
14. Counsel also submitted that the application did not meet the threshold espoused in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 because the Applicant had not established a prima facie case as guided by *Mrao vs First American Bank of Kenya Ltd & 2 others* (2003) eKLR. Counsel submitted that the Applicant did not establish that there was a right which had been infringed by the Respondent and that the closure of its premises was lawfully carried out as per Section 14 and 22 of the Kajiado Finance Act 2023.
15. On whether the Applicant will suffer irreparable harm, counsel submitted that as held in *Nguruman Ltd vs Jan Bonde Nielsen & 2 others* [2014] eKLR, irreparable injury meant injury that could not adequately compensated by an award of damages. And in the Applicant's case, the community outreach activities outlined had been quantified and were thus capable of being remedied by way of damages. Adding that if the Applicant was paying revenue to the National Government, they should equally pay revenue to the County as per the County Laws. The interim injunction sought should thus be denied and allow the Applicant to pay the requisite rates since it was able and capable of doing so.

Analysis and determination

16. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions, and the authorities cited. The issues for determination are:
 - i. Whether the Preliminary Objection dated 12th February 2024 has met the required threshold.
 - ii. Whether the Notice of Motion dated 17th January 2024 meets the threshold for grant of interlocutory injunction.;
 - iii. Who should bear the costs of this application?
17. The Defendant/Applicant, Tata Chemicals Magadi Limited, approached this Court through its Counterclaim and Application for grant of temporary injunction to restrain, the County Government of Kajiado, from closing down it business premises.
18. The Plaintiff/Respondent, filed a Preliminary objection contesting this application on grounds that this Court did not have jurisdiction to hear and determine the Counterclaim and the Application and should down its tools. This is because the issue in question was on payment of land rates, a dispute which was pending before the Court of Appeal in Nairobi Civil Appeal No. 530 of 2019.



19. A preliminary objection should be on questions of law which can be discerned on the face of the pleadings. The Supreme Court of Kenya in *Joho & another v Shahbal & 2 others* [2014] KESC 34 (KLR) citing with approval the case of:

“...*Mukisa Biscuit Manufacturing Co Ltd v West End Distributors* (1969) EA 696: stated thus;

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.. ...a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

20. The Plaintiff/Respondent has contested this Application on grounds of jurisdiction. Indeed “... Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...” see *Owners Of The Motor Vessel “Lillian S v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR).
21. The Plaintiff/Respondent claims that the subject matter in the Counterclaim and consequently the Application are questions of payment of land rates which dispute is pending at the Court of Appeal following an Appeal by the Defendant/Applicant. As such, this court should down its tools and let the Court of Appeal determine the issue. The Defendant/Applicant contested this allegation stating that the Application is on closure of its premises and not on payment of rates and the objection should be dismissed.
22. To determine whether this Court has jurisdiction to determine the Application, I have perused the pleadings before Court. In the Counterclaim, the Defendant/Applicant herein acknowledges that the Plaintiff/Respondent (who is the 1st Defendant in the Counterclaim) has over a period of time been demanding land rates from it. The Defendant/Applicant also admits that there is a pending matter in the Court of Appeal being (Nairobi Civil Appeal No. 530 of 2019) .
23. The Defendant/Applicant avers that despite the pending Appeal on whether the rates are payable to the Plaintiff/Respondent, the Plaintiff/Respondent raised an invoice on 3rd November 2023 claiming rates of Kshs. 358,748,000 and on 15th January 2024 the 2nd Defendant (In the counter claim), served the Defendant/Applicant with a demand for payment of the land rates; failure to which an order of closure of the Defendants/Applicant’s business would issue. And, on 16th January 2024, the 2nd Defendant proceeded to shut down the Plaintiff’s premises. That this closure was illegal, irregular and arbitrary and that the Defendants (in the counter claim) should be restrained from closing or interfering with the Applicant’s usage of the premises.
24. The Plaintiff/Respondent has argued that this Court has no jurisdiction to determine this Application claiming that the issue question about land rates is before the Court of Appeal. To determine whether this position is accurate means that this Court would have to peruse the Memorandum of Appeal. I am of the view that the fact that the issue of rate is pending in the court of Appeal cannot constitute



a Preliminary Objection in the true meaning of the word. No stay has been granted in the Court of Appeal to halt any discussion on the issue between the parties. I find that the Preliminary Objection herein is misplaced and the same is disallowed.

25. The other issue for determination is whether the Notice of Motion dated 17th January 2024 has met the threshold for grant of temporary injunction. The principles for granting a temporary injunction were set out in the precedent setting case of *Giella Vs. Cassman Brown & Co. Ltd* (1973) EA 358. The Court of Appeal in *Mrao Limited Vs. First American Bank Limited & 2 others* (2003) stated what amounts to a prima facie case.
26. Similarly the Court of Appeal in *Nguruman Limited Vs. Jan Bonde Nelson & Others* (2014) KECA, 606 KLR held;

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially”.

27. Has the Defendant/Applicant therefore established a prima facie case with the likelihood of success? It asserts that its business premises have been forcibly closed by the Plaintiff/Respondent and its agents. The Defendant/Applicant further avers that its operations are critical community outreach programs, including the establishment and running of a school, a Level Four hospital, a dam, and several boreholes, all of which contribute significantly to the well-being of the surrounding community. The Defendant/Applicant also highlights its employment of over 1,000 individuals, provision of bursaries to secondary and university students, and consistent contribution to the national economy through taxes and royalties. Therefore, closing down the company would have far reaching effects on all these activities supported by the Applicant.
28. I am satisfied that the Defendant/Applicant has demonstrated that it should be allowed to go on with its operations. I find that a prima facie case has been established.
29. The Defendant/Applicant has also demonstrated that it is likely to suffer irreparable loss that cannot be compensated by an award of damages if these orders are not granted.
30. The Defendant/Applicant has outlined a range of impactful activities and programs that provide tangible and intangible benefits to the community. While Plaintiff/Respondent contends that the monetary value of these initiatives can be ascertained and compensated, this Court acknowledges that the intrinsic value of certain activities, such as education through schools and healthcare services provided by hospitals, transcends mere financial quantification. These services safeguard fundamental and basic human rights, which are enshrined in *the Constitution*. The interruption of these critical services would cause profound and far-reaching consequences that no monetary compensation could remedy. Therefore, this Court is persuaded that an injunction is necessary to prevent irreparable harm to the community.



31. I find that the balance of convenience tilts in favour of the Defendant/Applicant who should be allowed to go on with its operations. The Plaintiff/Respondent on the other hand will still be paid the land rates owing once the Court of Appeal render its decision. I rely on the case of Paul Gitonga Wanjau Vs. Gathitu Tea Factory Co. Limited & 2 others (2016) eKLR.
32. In conclusion I find merit in this application and the same is allowed on the following terms;
- a. That pending the hearing and determination of this suit an order is hereby issued restraining the Defendants/ Respondents in the counter claim by themselves or their servants, agents, and or assigns from trespassing, entering, remaining or closing, locking, blocking or in any other manner interfering with any of the Defendants/Applicant's premises business operations, factories gates and properties situated in Magadi, in the County of Kajiado.
 - b. That costs do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH JANUARY 2025.

L. KOMINGOI

JUDGE

In the presence of:

Ms. Ngina for Ms. G. Katasi for the Plaintiff.

Mr. Chacha Odera for the Defendant.

Court Assistant - Mutisya

