



Hashi Logistics v Versus Damey Trading & Transport Company Limited (Civil Case E080 of 2023) [2024] KEHC 7804 (KLR) (Commercial and Tax) (24 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E080 OF 2023
JWW MONG'ARE, J
JUNE 24, 2024**

BETWEEN

HASHI LOGISTICS PLAINTIFF

AND

VERSUS DAMEY TRADING & TRANSPORT COMPANY LIMITED DEFENDANT

RULING

1. The Plaintiff/Applicant herein filed a Complaint alongside this application seeking an injunctive order as well as a mandatory order against the Respondent stating that it had contracted the Respondent to transport its containers and was issued with invoices by the Respondent. Thereafter the Applicant made payments on the back of an unequivocal promise by the Respondent to return its containers and Genest. It is the Applicant's contention that the Respondent has detained the said containers and the Applicant now stands liable to be sued by a third-party company, Almar Containers E. A Limited, from which it leased the subject containers and Genest.
2. Pursuant to the above, the Applicant filed a Notice of Motion dated 2nd March 2023 seeking orders that pending hearing and determination of this Suit, the Court to grant a temporary injunction restraining the Respondents by themselves, servants, agents, employees or assigns or any of them acting on their behalf from selling, disposing off, alienating the Applicant's Genest and Refer Cargo Containers Nos. Tdru7167753 and Szlu9303016.
3. Further, that the Court grants a mandatory injunction compelling the Respondent to return the Applicant's One (1) Genest and Refer Cargo Containers Nos. Tdru7167753 and Szlu9303016 detained by the Respondents and the costs of the Application be provided for.



4. The Application was supported by the grounds on the face of it and by the sworn Affidavit of Patrick Nzioka who asserted that despite settling all transportation, delay and demurrage charges claimed by the Respondent, the Respondent continues to unjustifiably detain the Applicant's Genset and Reefer Cargo containers and the Applicant is apprehensive that the Respondent may unlawfully sell, dispose off or otherwise act in a manner likely to expose the Applicant to claims of loss under the underlying leasing contract.
5. The Respondent filed a Replying Affidavit dated 14th April 2023 and denied transporting or ever being in possession or control of the said containers and therefore could not have detained them. As such the Respondent did not have a contract with the Applicant therefore the issues of breach and loss do not arise and the orders sought in the Application are in vain.
6. The parties filed written submissions which the court has carefully considered alongside the Application and the Response. The issues that arise for the court's determination are:-
 - a. Whether the Applicant has met the conditions for an injunction order?
 - b. Whether an order of mandatory injunction should issue?
7. The germane principles on interlocutory injunctions were stated by the Court of Appeal in East Africa in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA as follows:-
 - a) The Applicant must first establish a prima facie case with a probability of success.
 - b) The Applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.
 - c) Where there is doubt on the above, then the balance of convenience should tilt in favor of the Applicant.
8. Firstly, has the Applicant established a prima facie case as was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR? It was the Applicant's case that it entered into a partially oral and partially written contract between itself and the Respondent. On the other hand, the Respondent denied having entered into a transporter agreement with the Applicant as alleged and further contended that it did not transport and has never been in possession or control of the said containers and therefore could not detain them.
9. However, the Applicant has annexed copies of invoices issued by the Respondent as well as debit advice from the Applicant to the Respondent's bank account in a bid to demonstrate the existence of the transportation contract between the parties.
10. Taking into consideration the material placed before the court, the court concludes that the Applicant has put forward a prima facie case.
11. Secondly, will the Applicant suffer irreparable loss? On irreparable loss, the court is guided by the decision in the case of *Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR where the court then considered Halsbury's laws of England on what irreparable loss is and stated that: -

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff



may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

12. It was the Applicant’s position that it will suffer irreparable loss arising from not only reputation loss having leased the subject containers and genset from a third party, Almar Containers E. A Limited, and is likely to be subjected to third party suits as well as financial loss if the Respondent is not compelled to return the subject containers.
13. Therefore, it is the court’s considered opinion that the Applicants will suffer a substantial loss not only in terms of reputation but also financial loss and a greater inconvenience if the order of injunction is not granted.
14. Being that there is no doubt on the above two grounds, the court is satisfied that the Applicant has indeed met the threshold for granting of an order of interlocutory injunction as prayed.
15. Turning to the prayer for the orders of mandatory injunction, the court’s position is that a party seeking such a relief must in addition to the conditions stated above, establish the existence of special circumstances to warrant grant of the said mandatory orders. This position was reinforced by the Court of Appeal in *Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma* [2020] eKLR cited with approval the decision in *Kenya Breweries Limited & another vs. Washington O. Okeyo* [2002] eKLR where the court held that a mandatory injunction can be granted on an interlocutory applications as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application stage.
16. The law is therefore settled that in regards to a prayer for a mandatory injunction, such an order can only be given in the clearest cases. While the Applicant submitted that the Respondent had issued a written assurance to return the subject Containers and Genset upon the settlement of the invoices; the Respondent maintained that the Applicant concealed material facts critical in the determination of the suit. For instance, that there was a clear admission by Jean Bosco that he was contracted by Jimmy Kirengee to transport the containers.
17. Considering the above arguments, the court finds that the present case does not fall within the category of clear-cut cases that can form a basis to grant a mandatory injunction. Consequently, the prayer for a mandatory order of injunction is declined at this stage.
18. In light of the above, the Applicant’s Application is allowed in part only to the extent of the grant of an interlocutory injunction. Each party shall bear their own costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JUNE, 2024.

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J.W.W. MONG’ARE
JUDGE

