



**Margaret Wanjiku Muchiri t/a Jolka Investments v Kenya  
Revenue Authority & another (Commercial Case 030 of 2023)  
[2024] KEHC 11820 (KLR) (Commercial and Tax) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11820 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 030 OF 2023  
MN MWANGI, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**MARGARET WANJIKU MUCHIRI T/A JOLKA INVESTMENTS .... PLAINTIFF**

**AND**

**KENYA REVENUE AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**COMMISSIONER OF DOMESTIC TAXES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me is a Notice of Motion application dated 25<sup>th</sup> May, 2023 filed pursuant to the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 1 Rules 10 (1) & (2), Order 40 & Order 51 Rule 1 of the *Civil Procedure Rules, 2010*, Articles 38, 40 (a), 43, 47 (2) & 48 of the *Constitution* of Kenya, 2010, Sections 52 & 55 of the *Tax Appeals Procedures* and all other enabling provisions of the law. The plaintiff seeks a temporary injunction to restrain the defendants from interfering, closing, entering, and/or stepping unto the plaintiff's business premises situated at Infinity Industrial Area within Nairobi County, pending the hearing and determination of the suit between the parties herein.
2. The application is premised on the grounds on the face of the Motion and is supported by an affidavit sworn on the same day by Margaret Wanjiku Muchiri, the plaintiff herein. She averred that she owns a business called Infinity Industrial Park in Nairobi County, for which she received a certificate and compliance approval from NEMA on 7<sup>th</sup> October, 2022, and regularly pays for a Nairobi City County Single Business Permit. She claimed that on 24<sup>th</sup> January, 2023, the defendants' agents entered the aforesaid business premises, forcibly removed her workers, and shut down her business without any prior notice. As a result, she has suffered significant financial losses, including the destruction of bottled glass, leaving her unable to repay large debts owed to the bank.



3. She stated that the closure of her business has caused her and her family immense distress, as it was their sole source of income, leading to her children dropping out of school due to lack of fees. She denied that the items allegedly linked to her premises originated from her business, emphasizing that she was not present during the raid and was not provided with an inventory to ascertain that the alleged stamps came from her place of business.
4. In opposition to the application, the defendants filed a replying affidavit sworn on 7<sup>th</sup> September, 2023 by Joyce Kamau, a Field Enforcement Officer working for the 1<sup>st</sup> defendant in the 2<sup>nd</sup> defendant's department. She averred that on 24<sup>th</sup> April, 2023, she and the defendants' Officers participated in a multi-agency operation involving the DCI, Kenya Police, Anti-counterfeit, and Brand-Protection Unit-Platinum Distillers, based on intelligence reports accusing the plaintiff of counterfeiting. Ms. Kamau deposed that during the raid, they seized various alcoholic beverages from different manufacturers and a roll of counterfeit excise stamps from the plaintiff's business premises. That she then caused a Notice of Offence to be issued to the plaintiff, who fled the scene during the raid, and recommended prosecution of the plaintiff for violating Sections 15 & 28 of the *Excise Duty Act*, 2015 and Regulation 30 of the *Excise Goods Management System*.
5. She refuted the plaintiff's claim that she has been losing Kshs 800,000 per month, and averred that their records show the plaintiff as a nil filer, meaning that she derives zero income from the business. Ms. Kamau mentioned that the defendants might consider an amicable resolution, including the possibility of reopening the plaintiff's business premises, subject to compounding of the alleged offence and payment of all outstanding taxes dating back to the year 2021.
6. From the record, it is evident that on 31<sup>st</sup> July, 2023 this Court gave directions for canvassing of the application herein by way of written submissions. The said directions were reiterated on 11<sup>th</sup> October, 2023 and 11<sup>th</sup> December, 2023. On 11<sup>th</sup> March, 2024, Mr. Momanyi, learned Counsel holding brief for Ms. Magara, learned Counsel for the plaintiff indicated that Ms. Magara had not managed to upload her written submissions. On 23<sup>rd</sup> April, 2024, Mr. Lemaiyan, learned Counsel holding brief for Mr. Shijenje, Counsel for the defendants, indicated that that Mr. Shijenje had confirmed that he had filed his written submissions the previous month.
7. Upon perusal of the documents uploaded by the parties herein on the Court Case Tracking System (CTS) and the documents in the Court files, there is no sight of either the plaintiff's or the defendants' written submissions.

### **Analysis and Determination.**

8. Upon consideration of the instant application, the grounds on the face of it and the affidavit filed in support thereof, and the replying affidavit by the defendants, the issue that arises for determination is whether the plaintiff has made out a case to warrant being granted an order for temporary injunction.  
Whether the plaintiff has made out a case to warrant being granted an order for temporary injunction.
9. The law governing the granting of interlocutory injunctions is set out under Order 40 Rule (1)(a) and (b) of the *Civil Procedure Rules, 2010* which provides the following-  
Where in any suit it is proved by affidavit or otherwise-
  - a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or



- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

10. The conditions to be considered when dealing with an application for temporary injunction were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] EA 358, where the Court held as hereunder -

Firstly, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.

11. From the above cited authority, it is evident that before granting an order for temporary injunction, the Court has to ensure that the property in dispute in the suit is either in danger of being wasted, damaged or alienated by a party to the suit, or wrongfully sold in execution of a decree, or that the defendant threatens or intends to remove or dispose the property. In this case, the plaintiff is seeking an order for temporary injunction restraining the defendants from interfering, closing, entering, and/or stepping unto the plaintiff's business premises situated at Infinity Industrial Area within Nairobi County.
12. The defendants together with other law enforcement agencies raided the plaintiff's business premises known as Infinity Industrial Park, and before the said raid, the defendants did not issue the plaintiff with any Notice. The defendants however contend that the said raid was pursuant to intelligence reports received to the effect that the plaintiff was engaged in counterfeiting, and that when they got to the plaintiff's business premises, she fled the scene hence the confiscation of the items found at the plaintiff's business, and the decision to close down the said business was done in her absence.
13. I have perused the Notice of Inventory annexed to the defendant's replying affidavit and I note that the defendants are accusing the plaintiff of manufacturing excisable goods without a valid excise license and possession of excise stamps. It is evident from the plaintiff's supporting affidavit that she does not claim that she possesses a license for manufacturing excisable goods and/or to be in possession of excise stamps counterfeit or otherwise. To the contrary, the plaintiff asserts that she operates a business of second hand reusable glass bottles situate at Infinity Industrial Area within Nairobi County. In the aforesaid inventory, the defendants claim to have found a roll of counterfeit excise stamps of approximately 20,000 stamps at the plaintiff's business premises, and there is a recommendation for prosecution of the plaintiff.
14. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR defined what constitutes a *prima facie* case as follows -

"So what is a *prima facie* case" I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability



of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

15. From the facts of this case, I cannot make a finding that the plaintiff's rights have been infringed because doing so will require this Court to determine if the raid of the plaintiff's business premises by the defendants was legal. I am of the considered view that in so doing, I shall have determined this suit with finality at the interlocutory stage. For this reason, I am not satisfied that the plaintiff has established a *prima facie* case with a probability of success to warrant being granted the orders of injunction sought.
16. As to whether the plaintiff stands to suffer irreparable injury, which cannot be adequately compensated by an award of damages, I am not persuaded that this is the case. This is because, other than alleging that she will suffer irreparable injury, the plaintiff has not tendered any evidence in support of the said allegation. Furthermore, it is not disputed that the plaintiff files nil returns, which according to the defendants means that the plaintiff derives zero income from the business in question.
17. Having failed to establish a *prima facie* case and the irreparable injury that may be occasioned, the balance of convenience tilts in favour of the defendants.
18. It is my finding that the plaintiff's Notice of Motion application dated May 25, 2023 is bereft of merits. It is hereby dismissed with costs to the defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Ms Magara for the plaintiff

No appearance for the defendants

Ms B. Wokabi – Court Assistant.

