



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**CIVIL SUIT NO. E011 OF 2022**

KARIMA NZIGIYIMANA.....1<sup>ST</sup> APPLICANT  
SIBOMANA ABOUBA.....2<sup>ND</sup> APPLICANT  
KEVIN OMONDI ONYANGO.....3<sup>RD</sup> APPLICANT  
DERRICK BERNARD OTANGA.....4<sup>TH</sup> APPLICANT  
VICTOR RUEBEN NGINYA.....5<sup>TH</sup> APPLICANT  
LLYOD WAHOME KINGURU.....6<sup>TH</sup> APPLICANT  
TEDDY OSOK.....7<sup>TH</sup> APPLICANT  
PISTON VUNYOLI KINGURU.....8<sup>TH</sup> APPLICANT  
STEVE NJUNGE NDUNGU.....9<sup>TH</sup> APPLICANT  
ELVIS RUPIA.....10<sup>TH</sup> APPLICANT  
DERRICK ONYANGO.....11<sup>TH</sup> APPLICANT  
PHELIX INDEJE.....12<sup>TH</sup> APPLICANT  
SOLOMON ALUBALA MUYEKA.....13<sup>TH</sup> APPLICANT

-VERSUS-

RICARDO BADOER.....RESPONDENT

**RULING**

1. This ruling is with respect to the Notice of Motion application dated 14/01/2022 and filed on 20/01/2022. The application was taken out by the Applicants seeking for the following orders;

*i. THAT a Mareva injunction does issue to restrain the defendants, or by their servants or agents or otherwise howsoever from selling, transferring, or in any manner dealing with any shares, equity, property, and or bank accounts he holds at Badoer investments, Sumac Microfinance Limited, Nextgen Mall Commercial Unit No.14, Mercedes Benz Bus Registration No. KCR 158, Toyota Land cruiser Registration No. KCU 031 and Volkswagen Touareg Registration No. KCT 909Q from the jurisdiction of this Court and freeze any or all of such accounts held by the defendants, either wholly or as per centum of the total.*

2. The Motion is supported by the grounds set out on its body and the facts stated in the affidavit of Ms. Amazon Chepkirui Koech, advocate

of the Applicants.

3. At the time of writing this ruling, there had been no response to this application.

4. The statutory basis for granting a Mareva Injunction is provided for under *Order 39 of the Civil Procedure Rules*. In **Kanduyi Holdings Limited V Balm Kenya Foundation & Another [2013] eKLR**, the court held: -

***“Our Order 39 Rules 5 and 6 could be said and is a statutory codification of an interlocutory relief known as Mareva Injunction or freezing order in the UK. ...***

***Accordingly, Order 39 Rules 5 and 6 of the CPR should operate within known dimensions of law drawing from the above case [Mareva Compania Naviera SA v International Bulk carriers SA [1975] 2 Lloyd dis Rep 509] and other judicial precedents on the subject. Order 39 rule 5 and 6 of the CPR is not to be used to: 1) pressure a defendant; or 2) as a type of asset stripping (forfeiture); or 3) as a conferment of some proprietary rights on the plaintiff upon the assets of the Defendant. The purposes of any order that should be issued under Order 39 Rules 5 and 6 of the CPR is to prevent the Defendants or would be judgment-debtor from dissipating his assets as to have the effect of obstructing or delaying the execution of any decree that may be passed against him”***

**Order 39 Rule 5** deals with situations where the Respondent is about to dispose of or remove property from the jurisdiction of the Court.

5. In **Beta Healthcare International Limited v Grace Mumbi Githaiga & 2 others [2016] eKLR**, the court relied on **GOODE ON COMMERCIAL LAW, 4th Edition at Page 1287** in determining the threshold of granting a freezing injunction and observed: -

***“The grant of a freezing injunction is governed by principles quite distinct from those laid down for ordinary interim injunctions. ... Before granting a freezing injunction the court will usually require to be satisfied that;***

***(a) The claimant has ‘a good arguable case’ based on a pre-existing cause of action;***

***(b) The claim is one over which the court has jurisdiction;***

***(c) The defendant appears to have assets within the jurisdiction;***

***(d) There is a real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted; and***

***(e) There is a balance of convenience in favour of granting the injunction;***

***(f) The Court can also order disclosure of documents or the administration of requests for further information to assist the claimant in ascertaining the location of the defendant’s assets”***

6. On the first issue of whether there is a good cause of action, the applicants stated that the Respondent is currently involved in several lawsuits, including one with the 13th Respondent, who was his partner and is facing a defamation suit, and another with the 1<sup>st</sup> to 12<sup>th</sup> Respondents, who were his employees and he is facing an Unfair Termination suit against them. (**ELRC NO.001 OF 2020**), (**Civil Case No.E7323 OF 2020**).

7. In **African Banking Corporation Limited –Vs- Netsatar Limited & 6 Others Nairobi Milimani HCC No. 299 of 2009 (UR)** a good arguable case in the context of a freezing order was defined as one which is more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success.

8. In terms of whether there is a real risk of the assets being removed from the jurisdiction, the applicants have reason to believe that the Respondent, who owns a digital currency platform and an exchange market called Aidos Market, is forcing investors to withdraw their investments, causing losses because the company's ADK value is low and possibly worthless.

9. The applicant also claims that the Respondent has open proceedings with the Football Kenya Federation in which the 1<sup>st</sup> and 2<sup>nd</sup> Applicants have received a judgement ordering the Respondent to compensate them for unfair termination, which he has not done.

10. The Applicants believe they have evidence that the Respondent intends to sell all of his properties within this court's jurisdiction in order to escape his financial commitments and flee justice.

11. According to the applicants, the Respondent does not now reside within the jurisdiction of this court, does not have a domicile in Kenya, and his work permit has expired since his sole known address is outside the jurisdiction of this court. He has also stated that he does not have a concrete business profile and is attempting to develop one in Africa.

12. The applicants and interested parties are concerned that the respondent will face sanctions that will harm his business, and that because he has a bad reputation, banks may be hesitant to associate with such a volatile individual, causing him to have difficulty transacting with banks and businesses all over the world.

13. The Applicants aver that the Respondent will suffer no harm or damage if his assets are preserved until the conclusion of the suits aforementioned.

14. In **Mareva Campania supra** Lord Denning held at **page 215**:

*"In my opinion that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets."*

15. Consequently, I am convinced that the present circumstances would entitle a grant of a the Mareva injunction as sought.

16. In conclusion therefore, I find merit in the Motion and I will allow it, giving rise to the following order:

*i. THAT a mareva injunction does issue to restrain the defendants, or by their servants or agents or otherwise howsoever from selling, transferring, or in any manner dealing with any shares, equity, property, and or bank accounts he holds at Badoer investments, Sumac Microfinance Limited, Nextgen Mall Commercial Unit No.14, Mercedes Benz Bus Registration No. KCR 158 Toyota Land cruiser Registration No. KCU 031 and Volkswagen Touareg Registration No. KCT 909Q from the jurisdiction of this Court and freeze any or all of such accounts held by the defendants, either wholly or as per centum of the total.*

*ii. Costs of the application to abide the outcome of this suit.*

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 18<sup>th</sup> day of February, 2022.

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent