



**Global Freight Logistics International Limited v Global Freight Logistics Ltd & another  
(Civil Case 121 of 2013) [2022] KEHC 12938 (KLR) (26 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12938 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CIVIL CASE 121 OF 2013  
A MABEYA, J  
AUGUST 26, 2022**

**BETWEEN**

**GLOBAL FREIGHT LOGISTICS INTERNATIONAL LIMITED ..... APPLICANT**

**AND**

**GLOBAL FREIGHT LOGISTICS LTD ..... 1<sup>ST</sup> RESPONDENT**

**ARBI ALI MOHAMMEED MUSSANI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before court is an application dated May 13, 2021. It was brought under section 1A, 1B and 3A of the [Civil Procedure Act](#), order 51 rule 1 of the [Civil Procedure Rules](#).
2. It sought orders for a temporary injunction against the 1st respondent and its representatives restraining them from alienating, dividing, transferring, selling or charging the suit property being L R no 9042/305 pending the determination of the application and the suit.
3. The grounds for the application were set out on the face of the motion and on the supporting affidavit sworn by Tamim Bhaiji on May 13, 2021. It was contended that the applicant had between the periods of August 2005 to April 2007 negotiated with the 2nd respondent to purchase the 1st respondent's business and assets including the suit property. On May 22, 2007, a formal agreement was reached and the applicant began making payments to the respondents of kshs 26,463,691/=, USD 427,728 and GBP 50,000.
4. Subsequently, the applicant took possession of the business premises formerly occupied by the 1st respondent. It stayed in occupation for more than 5 years before the relationship between the parties broke down and the applicant was forcefully evicted therefrom on August 22, 2007.



5. That the applicant suffered enormous financial loss of the money paid to the respondents. That the suit was referred to mediation on September 21, 2016 but the parties failed to reach an agreement and the 2nd respondent passed away before a hearing date could be fixed.
6. That following the 2nd respondent's demise, it was necessary to preserve the suit property and unless the orders sought were granted, the applicant would suffer irreparable loss.
7. The application was opposed by the 1<sup>st</sup> respondent vide the replying affidavit of Uthman Mohamed sworn on March 18, 2022. It was contended that the applicant had expressed its interest to purchase the 1st respondent's business but the negotiations were unsuccessful. It was denied that any formal agreement was reached or executed and that the applicant ought to have produced the alleged agreement between the parties.
8. It was also denied that the 1st respondent had received any payment from the applicant as negotiations for purchase had collapsed. Further, there was no proof of payment by the applicant.
9. It was also denied that the applicant had been in occupation of the 1st respondent's premises. It was contended that the applicant had no valid claim against the respondents for the court or mediator to adjudicate on. That even though the 2nd respondent was deceased, the 1st respondent was a legal entity that survived his demise.
10. This court has considered the pleadings, evidence and the submissions filed in court. The main issue for determination is whether an order for injunction ought to be issued.
11. The conditions for consideration in granting an injunction were settled in the case of *Giella vs Cassman Brown & Company Limited (1973) E A 358*. It was held: -
 

“First, 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.”
10. Unfortunately, the circumstances herein do not meet any of the grounds above. The applicant laid the foundation of his application on an alleged agreement for sale of the 1st respondent's assets, including the suit property. The 1st respondent denied any such transaction had taken place. The alleged agreement was not produced.
11. Moreover, the applicant did not produce a single document as evidence of the colossal amounts it allegedly paid to the respondents.
12. This court is not convinced that an agreement for such a colossal amount could be entered and not written down. Further, there was nothing to show that the alleged amounts were paid to the respondents.
13. It is also not clear what the applicant's claim against the respondent's is. This suit was filed way back in 2013. It is lost to the court why this application was not brought at the time of filing the suit if at all there was danger of the suit property being lost. Further, it is not clear how the 2nd respondent's demise will lead to the loss of the suit property. There was no allegation that the new directors of the 1st respondent were intending to dispose of the suit property. Even then, the court would have had no ground to grant the orders as there was no clear claim against the respondents.



14. In the circumstances, I find that no *prima facie* case has been established against the respondents. Having failed to meet the first test, there is no need to interrogate the other tests.
15. The upshot is that the application dated May 13, 2021 is without merit and is hereby dismissed with costs to the 1st respondent.

It is so ordered.

CONCLUSIONS

**DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF AUGUST, 2022.**

**A MABEYA, FCIArb**

**JUDGE**

