



REPUBLIC OF KENYA



**Urysia Limited v Rentco East Africa Limited (Civil Case E931 of 2021)  
[2022] KEHC 16130 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16130 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E931 OF 2021  
WA OKWANY, J  
NOVEMBER 24, 2022**

**BETWEEN**

**URYSIA LIMITED ..... PLAINTIFF**

**AND**

**RENTCO EAST AFRICA LIMITED ..... DEFENDANT**

**RULING**

1. This ruling is in respect to the application dated July 12, 2022 wherein the applicant seeks orders that:-
  1. Spent
  2. That this honourable court be pleased grant an *ex parte* injunction restraining the plaintiff, its servants, agents including Icon Auctioneers from re-possessing the motor vehicles which are the subject of the Master Rental Agreements dated August 6, 2015 and any subsequent extensions pending the hearing and determination of this application.
  3. That this honourable court be pleased grant an *ex parte* injunction restraining the plaintiff, its servants, agents including Icon Auctioneers from re-possessing the motor vehicles which are the subject of the master rental agreements dated 6 August 2015 and any subsequent extensions pending the hearing and determination of this suit.
  4. That this honourable court be pleased grant an *ex parte* mandatory injunction directing the plaintiff, its servants and/or agents Icon Auctioneers to return motor vehicles GKB 278M, GIO 174M, GIO 337M, GIO 308M, GIO 210M, GIO 172M pending the hearing and determination of this application.
  5. That this honourable court be pleased grant an *ex parte* mandatory injunction directing the plaintiff, its servants and/or agents Icon Auctioneers to return motor vehicles GKB 278M,



GIO 174M, GIO 337M, GIO 308M, GIO 210M, GIO 172M pending the hearing and determination of this suit.

6. That costs of this application be provided for.
2. The plaintiff opposed the application through the replying affidavit of its Chief Executive Officer Mr Robert Kanda Nyasimi who states that the plaintiff already terminated the master operating lease agreement through the letter dated March 28, 2022 wherein it required the defendant to return all the motor vehicles and to pay the outstanding amount. He states that the defendant is aware of the effect of the termination and the requirement that it surrenders possession of the motor vehicles. He further avers that the main suit is with respect to accrued lease rentals and not the termination of the master operating lease agreement. He adds that repossession of the motor vehicles will not affect the computation of the lease rentals payable to the plaintiff by the defendant. He contends that the defendant is not entitled to the orders sought as the same would be akin to limiting the plaintiff's rights to its motor vehicles.
3. The application was canvassed by written submissions which I have considered.
4. The main issue for determination is whether the applicant has made out a case for the granting of the injunctive relief sought.
5. Order 40 rule 1 of the *Civil Procedure Rules 2010* provides for the circumstances under which the court may grant orders of temporary injunction. In the case of *Giella v Cassman Brown* (1973) EA 358 it was held; -

“The settled principles therein are firstly that the applicant must show a prima facie case with probability of success at the trial. Secondly, an interlocutory injunction will not normally be granted unless the applicant can show an irreparable injury which cannot be adequately be compensated by damages. Thirdly, if the court is in doubt, it should decide the application on a balance of convenience”.
6. Prima facie case was defined in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (2003) KLR 125 as follows:-

“So what is a prima facie case. In civil cases it is a case which on the material presented to the court or 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 on rebuttal from the latter.”
7. The defendant seeks orders to restrain the plaintiff from re-possessing the motor vehicles which are the subject of the master rental agreements dated August 6, 2015. It was the applicant's case that the suit herein is based on the breach of the master rental agreement between the parties and that the motor vehicles form the substratum of the suit.
8. The respondent/plaintiff on the other hand, maintained that there is a dispute in respect to the lease rentals and the amount payable to the plaintiff. It was the plaintiff's case that repossessing the vehicles will not affect the main suit.
9. I have perused the plaint dated November 25, 2021 and I note that the plaintiff's prayers are for remedies for alleged breach of the agreement. The plaintiff faults the defendant for failing to pay the rental installments when they fell due. I have perused the subject agreement and I note under clause 21



thereof on breach of the agreement, the plaintiff is at liberty to repossess the said vehicles after giving notice of termination of the agreement.

10. I note that the defendant does not deny its indebtedness to the plaintiff, and neither does it dispute the existence of the agreement. I further note that the defendant is apprehensive that the repossession of the said agreement would in turn lead to the breach of the agreement it has with the National treasury. It is my finding that the defendant has not established a prima facie case as it cannot have its cake and eat it by defaulting in repayments and at the same time retaining the suit motor vehicles.
11. On whether the defendant will suffer irreparable injury that cannot be remedied by damages if the order of injunction is not granted, the defendant contended that it will lose the motor vehicles it had leased from the plaintiff under the master lease agreement. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR the Court of Appeal held that:-

“If the applicant establishes a prima facie case that alone is not sufficient to grant an interlocutory injunction, the court must further be satisfied that the injury the applicant will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

12. The court further held that:-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prim facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

13. Guided by the above authority, I find that the Applicant/defendant has not demonstrated that it would suffer irreparable harm should the vehicles be repossessed as it can adequately be compensated for the loss thereof should the Court later make a finding in its favour. I further find that the balance of convenience tilts in favour of the Respondent as it would suffer greater harm in view of the defendant’s continued default. Furthermore, the defendant is in default and has therefore not come to this court with clean hands.
14. In conclusion, I find that the application dated July 12, 2022 is not merited and I therefore dismiss it with costs to the plaintiff.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022.**

**W. A. OKWANY**

**JUDGE**



**In the presence of: -**

Mr. Pamba for Limo for respondent

Mr. Nyaburi for defendant.

Court Assistant- Sylvia

