Royalscapes Limited & 2 others v Nyaribo & another (Civil Suit E243 of 2021) [2022] KEHC 16803 (KLR) (Civ) (22 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16803 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL SUIT E243 OF 2021

CW MEOLI, J

DECEMBER 22, 2022

BETWEEN

ROYALSCAPES LIMITED ..... 1ST PLAINTIFF

JOSEPHAT KIMARI GITHINJI ..... 2ND PLAINTIFF

PETER MUTHAMI MWIRANGA ..... 3RD PLAINTIFF

AND

DENNIS OMWOYO NYARIBO ..... 1ST DEFENDANT

MOBILE STATISTICS ..... 2ND DEFENDANT

RULING

1. Royalscapes Limited, Josephat Kimari Githinji and Peter Muthami Mwiranga (hereafter the 1st, 2nd & 3rd plaintiff(s)/applicant(s)) filed a motion dated September 30, 2021 seeking a temporary injunction against Safaricom PLC by itself, its agents and or assigns from further executing a novation agreement or any agreements with the 1st applicant, Dennis Omwoyo Nyaribo and Mobile Statistics Limited (hereafter 1st & 2nd defendant(s)/respondent(s)) or otherwise engaging in any or further businesses, transactions or financial accommodations with the 1st applicant and the respondents and that pending the hearing and determination of the suit this honorable court do issue an order freezing or otherwise barring the 1st respondent from operating account number 014xxxx1 at SBM Bank Kenya Limited in the name of the 1st applicant.

2. That pending hearing and determination of the suit this honorable court do issue an order freezing or otherwise barring the 1st respondent from operating account number 127xxxx8 at KCB Bank Kenya Limited in the name of the 2nd respondent in which he is the sole director and signatory; and that pending hearing and determination of the suit a temporary order of injunction be issued barring the

respondents by themselves, their agents, assigns and or servants howsoever, from using the name of the 1st applicant in carrying out their business.

3. Further prayers seek that pending hearing and determination of the suit this honorable court do issue an order to compel the 1st respondent to provide books of accounts and records of all income generated while operating under the 1st applicant business name; and that pending the hearing and determination of the suit the 1st respondent be ordered to deliver to the applicants all business related items and material obtained in the name of the 1st applicant and in his possession including but not limited to the company seal. The motion is expressed to be brought under section 1A, 1B & 3A of the *Civil Procedure Act*, order 40 rule 1 & 2, order 51 rule 1 of the *Civil Procedure Rules*.

4. The grounds on the face of the motion are amplified in the supporting affidavit sworn by the 2nd applicant who describes himself as one of the directors of the 1st applicant, conversant with the facts of the suit and duly authorized by the 3rd applicant who is a co-director hence competent to swear the affidavit. He asserts that on or about August 2020 he and the 3rd applicant experienced challenges and noted inconsistencies in the operations of the 1st applicant which prompted them to conduct an official search with the Company's Business Registration Services.

5. That the search revealed that on or about 2017 the 1st respondent fraudulently made changes in the 1st applicant's register wherein the 2nd & 3rd applicants names were removed from the company register as shareholders and directors replacing them with the 1st respondent's name as the sole director and shareholder and one Samuel Keengwe as secretary of the company. That a complaint was lodged with the Registrar of Companies and in response to the complaint the 1st respondent confessed to have effected the changes in the register of the 1st applicant and undertook to cease all operations in relation to the 1st applicant.

6. The 2nd applicant goes on to depose that the 1st respondent further swore an affidavit that was forwarded to the Registrar of Companies in which he admitted to take liability for any action that may arise against the 1st applicant for the period in which it was illegally under his directorship and upon receipt of the foregoing, the Registrar of Companies notified the respective parties to the matter that all documents lodged by the 1st respondent which led to a change of directorship and transfer of shares had been expunged from the company records with ownership and directorship of the 1st applicant being reinstated.

7. That despite the said rectification by the Registrar of Companies and undertaking by the 1st respondent to cease all operations under the 1st applicant's name, he continues to hold himself out to Safaricom Plc as a director of the 1st applicant. He further asserts that as of August 2021 the 1st respondent continued to operate an Mpesa Agency under the 1st applicant's name, and registration number and KRA Pin which he submitted to Safaricom Plc which action is illegal. Further, the 1st Respondent also caused KCB Bank account number 127xxxx8 in the name of the 2nd respondent in which he is a sole director to be opened and intends to transfer thereto proceeds earned in the name of the 1st applicant.

8. It is further contended that as a result of the respondents' actions Safaricom Plc has been incessantly forwarding withholding tax certificates to the 1st applicant in relation to transactions the applicants are not privy to. That the respondents actions amount to fraud and contravenes section 872 of the *Companies Act* whereas the 1st respondent's actions continue to put the applicants at unknown business risks, losses and liabilities which may be irreparable as such it is in the interest of justice that the motion be allowed so as to avert further risks and losses against the applicants.

9. The motion is opposed through a replying affidavit sworn by the 1st respondent dated October 21, 2021. He swears that he bought the 1st applicant with good intentions on or around November 2018 he traded in the company's name until March 2021 when he realized that he had been duped when the 2nd and 3rd applicants who lodged a complaint to the Registrar of Companies about his operations under the 1st applicant. That he agreed to surrender the 1st applicant to the 2nd and 3rd applicants after which the Registrar of Companies restored the 1st applicant to its previous position with 2nd and 3rd applicant as its directors.

10. He denies that he continues to hold himself out as a director of the 1st applicant having ceased to operate and engage with Safaricom PLC as the cash merchant agreement was terminated on the March 11, 2021; that the deed of novation referred to by the applicants was done in utmost good faith and communicated to the applicants on August 10, 2021. That he has since complained to the Directorate of Criminal Investigations (DCI) concerning the sale of the 1st applicant and investigations were ongoing. In conclusion he particularly takes issue with the suit on grounds that the same ought to abate for non-compliance with order 5 rule 1 & 2 of the *Civil Procedure Rules*.

11. In a rejoinder by way of a supplementary affidavit the 2nd applicant deposed that the 1st respondent did not provide evidence of alleged purchase of the 1st applicant. He asserts that the 1st respondent continues to operate in the name of the 1st applicant and denies having received any communication from the respondents with regard to the drawing and execution of the deed of novation agreement (hereafter the deed) whose copy was belatedly attached in the respondents reply to the motion. In conclusion he contended that the Mpesa statement relied on by the 1st respondent, indicates that he continues to operate in the 1st applicant's name as such it is in the interest of justice the motion be allowed.

12. The motion was canvassed by way of written submissions. Counsel for the applicants anchored his submission on the of-cited case of *Giella v Cassman Brown* (1973) EA 358 on the legal requirements that ought to be satisfied for an order of injunction to be granted. Addressing the court on whether a *prima facie* case has been established he placed reliance on the decisions in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR and *Moses C Muhia Njoroge & 2 others v Jane W Lesaloi & 5 others* [2014] eKLR. He asserted that the 1st respondent continues to operate under the 1st applicant's name and has proceeded to have the deed drawn, which actions infringe on the rights of the 2nd & 3rd applicants who are the duly registered and rightful owners of the 1st applicant.

13. Concerning irreparable loss counsel contended that the 1st respondent continues to operate his business under the 1st applicant's name by relying on its goodwill to the detriment of the applicants business, reputation and corporate image. That compensation for the loss of reputation and business by the applicants cannot be adequately compensated by an award of damages. He contended that the balance of convenience tilts in favour of the applicants. He cited the decision in *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR it to assert that the 1st respondent continues to infringe on the rights of the applicants by continuing to operate in the 1st applicant's name.

14. Submitting on whether a freezing order ought to issue, he relied on *Mareva Compania Naveria SA v International Bulk Carriers SA* [1980] 1 All ER 213 to argue that the 1st respondent continues to operate bank accounts in the name of the 1st applicant portending the risk that monies and proceeds earned by the 1st respondent in the name of the 1st applicant will be removed from the jurisdiction or otherwise dissipated if an injunction is not granted, hence the balance of convenience tilts in favour of the applicants. Counsel reiterated the material tendered as proof of the fact that the 1st respondent

has continued to operate in the name of the 1st applicant and asserted that it is adequate to warrant granting of the motion.

15. Counsel for the respondents on his part confined his submissions to three issues. Firstly, he argued that the 2nd and 3rd applicant have failed to comply with the procedure for bringing a derivative action on behalf of the 1st applicant. Citing the provisions of section 238, 240 and 242 of the *Companies Act, 2015* and the decision in *Ghelani Metals Limited & 3 others v Elesh Ghelani Natwarlala & another* [2017] eKLR counsel contended that the applicants have violated the requisite procedures for instituting a derivative action on behalf of the company and the instant proceedings are a nullity.

16. Citing the provisions of order 1 of the *Civil Procedure Rules* counsel submitted that the applicants have failed to enjoin Safaricom Plc while seeking an order of injunction to restrain it from entering into any agreement with the respondents. In conclusion it was argued that the court cannot be engage in micromanaging contracts existing between Safaricom Plc and the respondents.

17. That it is a universal principle that parties have freedom to contract without interference or supervision from other parties unless the contract entered into is illegal, unenforceable or the contract is against public policy. Citing the decision in *Nyongesa & 4 others v Egerton University* [1990] KLR 962, counsel contended that the court's powers are limited in that regard. He asserted that the motion lacks merit and should be dismissed with costs.

18. The court has considered the material canvassed in respect of the motion. However, before delving into the merits it is necessary to address two preliminary issues. Firstly, counsel for the respondent has argued that the proceedings herein are a nullity by dint of sections 238, 240 and 242 of the *Companies Act, 2015* for failure by the applicants to comply with the procedure prescribed for bringing derivative actions. Section 238 of the *Companies Act, 2015* states that;-

    (1) In this part, "derivative claim" means proceedings by a member of a company—

        (a) in respect of a cause of action vested in the company; and

        (b) seeking relief on behalf of the company.

    (2) A derivative claim may be brought only—

        (a) under this part; or

        (b) in accordance with an order of the court in proceedings for protection of members against unfair prejudice brought under this Act.

    (3) A derivative claim under this part may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

    (4) A derivative claim may be brought against the director or another person, or both.

    (5) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.

    (6) For the purposes of this part—

        (a) "director" includes a former director.

        (b) a reference to a member of a company includes a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

19. There is no dispute that the 2nd and 3rd applicants (hereafter the applicants) were the shareholders and directors of the 1st applicant (hereafter the company) prior to changes effected through documents dated October 24, 2017 and lodged with the Registrar of Companies (hereafter the Registrar) effectively transferring all the shares owned by the applicants in the company to the 1st respondent who became a sole director of the company.

20. Pursuant to a complaint lodged by the applicants with the Registrar in March 2021 who engaged in correspondence with the 1st respondent on the complaint. Eventually by his letter and affidavit dated 10th and March 11, 2021, respectively (applicants' annexure JKG 4& 5) the said respondent "surrendered" back the company to the applicants albeit claiming that he had bought the company from a party who was at large.

21. By his letter dated March 16, 2021 (applicants' annexure JKG 6), the Registrar communicated that he had expunged all the documents lodged for purpose of the changes objected to and the directorship and ownership of the company reverted to the applicants. That should have marked the end of the 1st respondent's purported shareholding and directorship of the company. I use the word "purported" advisedly, as will soon become evident.

22. However, on July 27, 2021 the 1st respondent admittedly executed a novation deed between the company, Safaricom Plc, and the 2nd respondent (applicants' annexure JKG 8) by which the 2nd respondent assumed and undertook to perform the cash merchant/ dealer agreement earlier entered into between Safaricom Plc and the company which was accordingly released from the agreement. On the face of the annexure, it is evident that the 1st respondent executed the deed in the capacity of director of both the company and the 2nd respondent. Apparently, the 1st respondent continued to offer services to Safaricom Plc which resulted in withholding tax certificate or certificates being raised in the name of the company (see for instance the applicants' annexure JKG10 dated September 20, 2021 in respect of a transaction dated August 31, 2021).

23. The gravamen of the 2nd and 3rd applicants grievance is that 1st respondent illegally and or irregularly changed the 1st applicant's directorship and continues to illegally carry on business in the name of the 1st applicant. In his letter dated March 10, 2021 to the Registrar, the 1st respondent stated that he was "not contesting" ownership of the company and conceded that documents in his possession concerning the purchase of the company were "not genuine" and he would "surrender" the company back to the applicants the DCI pursued the suspect who duped him by purporting to sell the company to him.

24. Hence, *stricto sensu* the 1st respondent was not a genuine director of the company as envisaged by the *Companies Act*, but probably a victim of fraud. On all probabilities, the 1st respondent was a man caught while obliviously wearing a stolen coat, which he promptly surrendered to the owner upon realizing the fact, but nevertheless continued to clutch onto the coat tails in a bid to extract the contents of the coat pocket. The 1st respondent having been installed as director through what appears to be a fraudulent scheme cannot qualify as a *bona fide* director of the company in respect of whom the provisions of section 238 of the *Companies Act* apply, and given his responses herein, the court is at a loss as to why his counsel has opted to assert the contrary.

25. On the second preliminary issue, the applicants have sought an injunctive order against Safaricom Plc which company has not be enjoined in the instant proceedings as a party. The rules of natural justice dictate that a party against whom orders are sought ought to be heard before any adverse orders issue as against him.

26. This position was clearly explained by the Court of Appeal in *Pashito Holdings Limited & another v Paul Ndungu & 2 others* where it was noted that:

> " The respondents could not have established a prima facie case with a probability of success which is an essential legal requirement in order to be entitled to an interlocutory injunction unless the Commissioner was a party to the proceedings. The learned judge should have directed that the Commissioner was a proper party without whom the relief sought against the Commissioner could not be granted. The rule of "audi alteram partem", which literally means hear the other side, is a rule of natural justice. According to Jowitts Dictionary of English Law (2nd Edition)
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> > "It is an indispensable requirement of justice that the party who had to decide shall hear both sides, giving each an opportunity of hearing what is urged against him". There is an unpronounceable Latin maxim which in simple English means:
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> > > "He who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right".
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> The learned judge quite erroneously in our view said:
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> > "However, my view is, that in this particular case, it is not necessary to join the Commissioner of Lands as a basis of making such an order. In any case it was open to the defendants to join any party to these proceedings". With respect, he should have seen that it was not up to the appellants to fill up the gaping holes in the respondents' case who alone should have suffered the consequences of not suing the party against whom they were seeking the relief".

27. Thus, no order can issue in this case against Safaricom Plc as sought in prayer 3 of the motion. Besides, the action sought to be restrained has apparently occurred already if the contents of the applicants' annexure JKG 8 are believed.

28. With respect to other injunctive reliefs being sought against the Respondents the principles governing the grant of an interlocutory injunction as enunciated in *Giella v Cassman Brown & Co Ltd* [1973] EA 358 are settled. Similarly, as to what constitutes a prima facie case, this is settled too since the decision in *Mrao v First American Bank of Kenya Ltd & 2 others* CA No 39 of 2002; [2003] eKLR. Both decisions have been reaffirmed and applied by superior courts in countless subsequent decisions including the recent decisions cited in this case by the parties.

29. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR restated the principles governing the grant of interlocutory injunctions enunciated in Giella's case and observed that the role of the Judge dealing with an application for interlocutory injunction is merely to consider whether the application has been brought within the said principles. The court cautioned that such a court ought to exercise care not to determine with finality any issues arising. The court expressed itself as follows:

> " ...Since the fundamentals about the implications of the interlocutory orders of injunctions are settled, at least over four decades since Giella's case, they could neither be questioned nor

be elaborated in detailed research. Since those principles are already ..... by authoritative pronouncements in the precedents, they may be conveniently noted in brief as follows:

> In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:
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> a) establish his case only at a prima facie level
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> b) demonstrated irreparable injury if a temporary injunction is not granted.
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> c) allay any doubts as to (b) by showing that the balance of convenience is in his favor."

30. In addition, the court stated that the three conditions apply separately as distinct logical hurdles to be surmounted sequentially by the applicant. That is to say, that the applicant who establishes a prima facie case must further establish irreparable injury, being injury, for which damages recoverable could not be an adequate remedy and that where the court is in doubt as to the adequacy of damages in compensating such injury, the court will consider the balance of convenience. Finally, where no prima facie case is established, the court need not investigate the question of irreparable loss or balance of convenience.

31. As to what constitutes a *prima facie* case, the Court of Appeal delivered itself as follows: -

> " Recently, this court in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 fashioned a definition for "*prima facie* case" in civil cases in the following words:
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> > "In civil cases, a *prima facie* case 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 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."
> >
> > We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a *prima facie* case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained. The invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a *prima facie* case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title, it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that *prima facie* case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more

than that the court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed." (Emphasis added)

32. A *prima facie* case is built upon evidence and the applicable law. Based on the undisputed facts outlined earlier in this ruling, the applicants have made out a prima facie case against the 1st respondent. The 1st respondent despite deposing under oath to cease business activity in the name of the 1st applicant purported to act as a director of the 1st Applicant when he executed the deed dated July 26, 2021 and apparently engaged in other commercial transactions giving rise to withholding tax invoices in the company's name, and possibly incurring liabilities. It is not inconceivable that the company may risk financial exposure from the continued if the 1st respondent continues to hold himself out as a director of the company. Thus, the court is prepared to find that a case has been made out in respect of prayer 6 of the motion.

33. However, concerning the prayers seeking the freezing or otherwise barring the 1st respondent from operating the bank accounts number 014xxxx1 at SBM Bank Kenya Limited in the name of the 1st Applicant and number 127xxxx8 at KCB Bank Kenya Limited in the name of the 2nd respondent, these prayers are essentially seeking a mareva injunction.

34. The Court of Appeal in *Mcdouglas Kagwa v Weekly Review Ltd* [1992] eKLR stated regarding such injunction that:-

> " What the judge granted was not an ordinary injunction. It is a form of injunction of a recent development known as a mareva injunction taking its name from a case in England where it was first made. It was defined by Lord Denning MR in his judgment in the case of Owners of Cargo Lately Laden on Board the Vessel Siskina and others v Distos Compania Naviera SA [1977] 3 All ER 803 at page 809:
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> > "During the last two years the courts of this country have rediscovered a very useful procedure which used to be known as foreign attachment. It is now called the 'mareva injunction'. It is a procedure by which the courts can come to the aid of a creditor when the debtor has absconded or is overseas, but has assets in this country. The courts are ready now to issue an injunction so as to prevent the debtor from disposing of those assets or removing them from this country, thus defeating the creditor of his claims. It is a procedure familiar to all the countries of the Continent of Europe and to the United States of America, and to the province of Quebec. If you read the facts in *Mareva Compania Niera SA v International Bulcarriers Ltd* [1975] 2 Lloyd's Rep 509, you will see how desirable and important it is that the Courts should have jurisdiction to issue such an injunction. It was challenged before us recently in Rasu Maritima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina) and Government of Indonesia (as interveners) [1977] 3 ALL ER 324, but the challenge failed. The procedure is now established beyond question. It has been used repeatedly in the Commercial Court to the satisfaction of all concerned.
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> The Court of Appeal in England held in the case of Chartered Bank v Daklouche [1980] 1 WLR 107, that a "mareva" injunction can be granted against a defendant who, though served within the jurisdiction and having assets in England, was likely to leave and withdraw the assets at short notice. This is a jurisdiction which Courts in Kenya can properly and usefully exercise under order 39 of the Civil Procedure Rules. Where the court grants a "mareva" injunction, it should also order a speedy trial of the action in order to avoid any

possible injustice that may be caused to the defendant by delay. But a "mareva" injunction cannot be issued against defendants who were permanently settled in Kenya and have their assets here."

35. This court associates itself with the reasoning of Gikonyo, J in *Kanduyi Holdings Limited v Balm Kenya Foundation & another* [2013] eKLR, to the effect that:-

> The application before me is founded on order 39 rules 5 and 6 of the CPR. Our order 39 rule 5 and 6 could be said and is a statutory codification of an interlocutory relief commonly known as Mareva injunction or freezing order in the UK. The principle was laid down in the case of *Mareva Compania Navierra SA v International Bulkcarriers SA* [1975] 2 Lloyd dis Rep 509.
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> (22) Accordingly, order 39 rules 5 and 6 of the *CPR* should operate within known dimensions of law drawing from the above case and other judicial precedents on the subject. Order 39 rule 5 and 6 of the *CPR* is not to be used:
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> 1) to pressure a defendant; or
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> 2) as a type of asset stripping (forfeiture); or
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> 3) as a conferment of some proprietary rights on the plaintiff upon the assets of the defendant.
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> 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.
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> (23) Given the scope and tenor of the relief under order 39 rule 5 and 6 of the *CPR*, the plaintiff has the onus of proving that the defendants:
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> a) Is about to dispose of the whole or any part of his property; or
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> b) Is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court.
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> Courts have held that the plaintiff must establish a *prima facie* case on the above elements within the thresholds for grant of interlocutory injunction in Giella v Cassman Brown. The Court of Appeal in the case of Kuria Kanyoko t/a Amigos Bar and Restaurant v Francis Kinuthia Nderu & others [1985] 2 KAR 126 p 126 had the following to say on the Order 38 Rule 5 of the previous CPR (equivalent of current Order 39 rule 5 and 6) that:
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> > The power to attach before judgment must not be exercised lightly and only upon clear proof of the mischief aimed at by order 38, rule 5 namely that the defendant was about to dispose of his property or to remove it from the jurisdiction with the intent to obstruct or delay any decree that may be passed against him." (sic)

36. Evidently, the applicants did not invoke the provisions of order 39 of the *Civil Procedure Rules* regarding the prayers seeking the freezing of accounts operated by the respondents. From the 1st respondent's affidavit material, it can be inferred that he is a Kenyan who resides within the court's jurisdiction. Further there is no reference in the plaint dated September 30, 2021 to any monies owed

by the respondents rather that some money may have been received in the foregoing bank accounts because of the 1st Respondent's activities in the name of the company.

37. Moreover, no credible evidence was led that the 1st respondent is about to dissipate the monies or remove them from the jurisdiction of the court with intent to obstruct or delay any decree that may be passed against him. In any event even if judgment were to finally be entered against the respondents the applicants have recourse by way of execution proceedings. Consequently, prayers 4 and 5 that seek the freezing of accounts do not lie.

38. Finally, the prayers 7 and 8 of the motion as crafted appear premature, too wide, and speculative and cannot be granted at this stage. The court is wary of aiding what might eventually turn out to be a fishing expedition. As in *Nguruman*'s case (*supra*), in *James Ndungu Gethenji & 3 others v Gitahi Gethenji & 3 others* [2018] eKLR the Court of Appeal exhorted against the making of final determinations and orders at interlocutory stage:-

> " Being an interlocutory application, we must consider only issues that do not compromise or prejudice the hearing and determination of the suit pending before the High Court. This court in Pattni v Ali & 2 others CA No 354 of 2004 (UR183/04), stated that in interlocutory applications, the orders that are sought should not decide the rights and obligations of the parties but are merely meant to keep matters in status quo pending such determination."

39. In summary therefore, prayers 3,4,5,7, and 8 of the applicants' motion have not been justified and cannot be granted. The court having reviewed all the material placed before this court with respect to the applicants' motion dated September 30, 2021 is only persuaded to grant prayer 6 of the motion in terms that pending hearing and determination of the suit, a temporary injunction is hereby issued to restrain the respondents by themselves, their agents, assigns and or servants howsoever, from using the name of the 1st applicant company in carrying out their business or for related purposes. The costs of the motion will abide the outcome of the suit.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 22ND DAY OF DECEMBER 2022.

C MEOLI

JUDGE

In the presence of:

For the applicants: Mr Khalai

For the respondents: Mr Njau

C/A: Adika