



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCC NO. 243 OF 2019

PRUDENTIAL CAPITAL PARTNERS LIMITEDPLAINTIFF/APPLICANT

VERSUS

TEXT BOOK CENTRE LIMITED1STDEFENDANT/RESPONDENT

CO-OPERATIVE BANK OF KENYA.....2ND DEFENDANT/RESPONDENT

SIDIAN BANK LIMITED.....3RD DEFENDANT/RESPONDENT

RULING

1. Through the plaint dated 27th December 2019, the plaintiff/applicant herein sued the defendants seeking the following orders:-

a) A declaration that the purported termination of the franchise agreement dated 8th February 2019 and the purported termination letter dated 19th December 2019 by the 1st defendant is unlawful, irregular, and null and void.

b) A permanent injunction do issue restraining the 1st defendant from terminating the franchise agreement dated 8th December 2019, closing any of the franchised stores and/or advertisement/promotion outlets being operated by the plaintiff or in any other manner whatsoever interfering with the plaintiff's/applicant's business operations currently being undertaken pursuant to the franchise agreement dated 8th February 2019.

c) A permanent injunction do issue restraining the 2nd and 3rd defendants from paying out the sum of Kshs 70 million or any other sum of money whatsoever to the 1st defendant or any other person/entity under the Bank Guarantee issued by the 2nd defendant on 1st March 2019.

d) Damages of breach of contract against the 1st defendant.

e) Costs of the suit.

f) Any other relief that this Honourable court may deem fit.

2. Contemporaneously with the plaint, the applicant filed an application dated 27th December 2019, (hereinafter "the First Application") seeking the following orders:

1. Spent.

2. Spent.

3. That a temporary order or injunction do hereby issue restraining the 1st defendant/respondent from terminating the franchise agreement dated 8th February 2019, closing any of the franchised stores and advertisement/promotional outlets being operated by the plaintiff or in any other manner whatsoever interfering with the plaintiff's business operations currently being undertaken pursuant to the franchise agreement dated 8th February 2019 pending hearing and determination of this suit.

4. That pending hearing and determination of this application, a temporary order of injunction do hereby issue restraining the

2nd and 3rd defendants/respondents from paying out the sum of Kshs 70 million or any other sum of money whatsoever to the 1st defendant/respondent or any other person/entity, payable under the bank guarantee issued by the 2nd defendant/respondent on 1st March 2019.

5. That pending hearing and determination of this suit, a temporary order of injunction do hereby issue restraining the 2nd and 3rd defendants/respondents from paying out the sum of Kshs 70 million or any other sum of money whatsoever to the 1st defendant or any other person/entity, payable under the bank guarantee issued by the 2nd defendant/respondent on 1st March 2019.

6. That costs be provided for.

3. The application is supported by the affidavit of the plaintiff's Managing Director and is premised on the grounds that:

1. That the 1st defendant/respondent has unlawfully, without any just cause and in breach of express terms of the franchise agreement served the plaintiff/applicant with a termination letter purporting to terminate the franchise agreement dated 8th February 2019.

2. That said letter requires that the plaintiff/applicant ceases its operations at the franchised stores by Monday 13th January 2020 and to pay all moneys due to the 1st defendant/respondent by the said date.

3. That most critically, the 1st defendant/respondent has not demonstrated any basis for its termination notice despite the plaintiff/applicant having been operating its franchised stores in accordance with the provisions of the agreement.

4. That the plaintiff/applicant is apprehensive that the 1st defendant (Franchisor) could call the bank guarantee of seventy million shillings (Kshs 70,000,000/=) issued by the 2nd defendant (Guarantor).

5. That the plaintiff/applicant is currently operating two franchised stores and the purported termination without the due days notice will occasion irreparable damage on the part of the plaintiff/applicant.

6. That the plaintiff/applicant has invested heavily in the establishment of the existing franchised stores and is yet to recoup its investment both in terms of infrastructure and commercial good will and such termination on flimsy grounds amounts to unfair trade practice.

7. That the 1st defendant/applicant does not stand to suffer any prejudice in view of the fact that there is an existing bank guarantee of Kshs 70 million.

4. The 1st respondent opposed the application through the replying affidavit of its Managing Director, **Armand Houahu**, sworn on 8th January 2020.

5. A summary of the 1st defendant's deponents averments are as follows:

1. The plaintiff and the 1st defendant entered into Franchise Agreement dated 8th February 2019 (the Agreement). Under the agreement, the 1st defendant licensed the plaintiff with a limited right to operate franchise stores to sell the 1st defendant's products (see clause 2.1(i) and (ii) at the agreement).

2. By the agreement, the 1st defendant also granted the plaintiff the non-exclusive right to use its two trademarks: TM No. 68985 "Text Book Centre" (name and logo) and TM No. 63202 "TBC" (the defendant's Trade Marks) in the business of the franchised stores (see Clause 2.1(iii) of the Agreement).

3. Pursuant to the agreement the plaintiff established two franchise stores in Thika at Maisha heights and in Kiambu at the Kiambu Mall (collectively, "the Approved Franchise Stores") upon receipt of approval from the 1st defendant.

4. The plaintiff procured a guarantee from the 2nd defendant dated 1st March 2019 in respect of the Approved Franchise Stores for the total sum of Kshs 70,000,000(the guarantee), in favour of the 1st defendant.

5. From March 2019 the 1st defendant supplied orders to the plaintiff with a total order value of Kshs 31,632,212.55. The 1st defendant has only received payment in the total amount of Kshs 9,094,641 from the plaintiff such that the sum of Kshs 23,642,167.55 is due and owing from the plaintiff

6. Meanwhile, without the 1st defendant's knowledge or approval, the plaintiff proceeded to set up a "TEXT BOOK CENTRE" franchise store at Greenspan Mall in Nairobi from which it set up signage bearing the 1st defendant's Trade Marks and sold products initially supplied by the 1st defendant to the Kiambu Store.

7. The plaintiff's conduct amounted to a breach of a number of clauses in the agreement.

8. Further to the breach of the agreement, the 1st defendant issued a letter to the plaintiff dated 19th December 2019 giving notice for the immediate termination of the agreement in accordance with its terms. The nature of the breach as outlined in the letter entitled the 1st defendant to the immediate termination of the agreement as provided under Clause 21.3.

9. In its termination letter the 1st defendant also required the plaintiff to cease operations and activities at its unauthorized store at Greenspan Mall in any event by 13th January 2020.

10. By reason of the termination and on account of sums being due under the agreement, the 1st defendant on 27th December 2019 called in the guarantee from the 2nd defendant and demanded payment of the outstanding sum of Kshs 21,487,520 within 30 days which sum was due and payable as at the date of termination of the agreement.

2nd defendant's response.

6. Through the replying affidavit of the 2nd defendant's employee in the Trade Service Unit, **Mr. Aloys Onyancha**, dated 15th January 2020, the 2nd defendant indicates that it is not opposed to the application dated 27th January 2019.

7. He confirms that the 2nd defendant holds a Bank Guarantee dated 1st March 2019 which guarantee expires on 28th February 2020 and that in the said guarantee, the 2nd defendant undertakes to pay the 1st defendant the sum of Kshs 70,000,000 upon receipt of their written demand and within 30 days.

8. He avers that in a letter dated 27th December 2019, the 1st defendant called up on the payment of the bank guarantee by demanding the settlement of Kshs 21,487,520. He further avers that under the Guarantee, the 2nd defendant is obliged without argument or any reference to the plaintiff, to pay the 1st defendant any sum of sums within the limits of Kshs 70,000,000 on or before 26th January 2020.

9. He adds that the 2nd defendant is merely a guarantor bank and is not privy to the Franchise Agreement between the plaintiff and the 1st defendant or the disputes arising there from.

3rd defendant's response

10. Through the replying affidavit of its Legal Officer, **Miss Beverline Chweya**, the 3rd defendant avers that sometime in the year 2018, the plaintiff applied to the 3rd defendant for a term loan facility in the sum of kshs 70,000,000 which application the 3rd defendant approved and was secured on a legal charge over the plaintiff's property known as Kajiado/Loodariak/793 for the sum of kshs 100,000,000.

11. She further avers that the 3rd defendant then instructed the 2nd defendant to issue a guarantee in favour of the 1st defendant for the sum of Kshs 70,000,000 on its behalf and issued a counter guarantee to the 2nd defendant.

12. She adds that pursuant to the said Guarantee, and subsequent counter guarantee, the 2nd and 3rd defendants irrevocably promised to pay the 1st defendant, following a written demand, an amount not exceeding 70,000,000 and that through a demand made on 27th December 2019, the 1st defendant wrote a demand to the 2nd defendant making a partial claim on the payment of the Guarantee in the sum of Kshs 21,487,520. She contends that the 3rd defendant is not privy to the Franchise Agreement between the plaintiff and the 1st defendant of the dispute emanating there from.

1st defendant's application dated 16th January 2020.

13. Arising from the said Franchise Agreement and following the filing of the plaintiff's plaint and application dated 27th December 2019, the 1st defendant lodged the application dated 16th January 2020 (hereinafter "the second Application") seeking the following orders:

1. *Spent.*

2. *Spent*

3. *Spent*

4. *Pending hearing and determination of this suit, a temporary injunction order do issue restraining the plaintiff, whether by itself, directors, officers, employees, servants, agents, successors and/or assigns from advertising, promoting, displaying, selling and/or offering for sale, or otherwise using or dealing with the 1st defendant's trademarks TM No. 68985 "Text book Centre" (name and logo) and TM No. 68202 "TBC"(name) or Text Book Centre Intellectual Property as defined under the Franchise Agreement dated 8th February 2019 between the plaintiff and the 1st defendant at Greenspan Mall, Nairobi or at any other location.*

5. *Pending hearing and determination of this suit, a temporary injunction order do issue restraining the plaintiff, whether by itself, directors, officers, employees, servants, agents, successors and/or assigns from operating, running and/or trading at the Masha Heights in Thika, Kiambu Mall in Kiambu, Greenspan Mall in Nairobi or at any other location under the terms of the Franchise Agreement dated 8th February 2019 between the plaintiff and the 1st defendant or in any other way representing or*

giving the impression that it is a present or former franchise or licensee of the 1st defendant.

14. The application is supported by the affidavit of the 1st defendant's Managing Director and is premised on the grounds that under the Franchise Agreement of 8th February 2019 between the plaintiff and the 1st defendant, by which the 1st defendant licensed the plaintiff with a limited grant to operate franchised stores to sell its products, the plaintiff established franchise stores at Maisha Heights in Thika and at Kiambu Mall in Kiambu (hereinafter "**the Approved Franchise Stores**").

15. He states that on 30th September 2019, the defendant received a request from the plaintiff, to approve a new location for a franchise store at Greenspan Mall in Nairobi which request the 1st defendant did not approve owing to its concerns over the plaintiff's performance at the Approved Franchise Stores at Kiambu and Thika.

16. He avers that in breach of the terms of the Franchise Agreement, and unbeknown to the 1st defendant, the plaintiff sought and was awarded a letter of offer dated 1st December 2019 by Tusker Mattresses Supermarket (Tuskys) for marketing, advertisement and promotion of the plaintiff's TCB products at Tuskys Branches including Tuskys Greenspan, Tom Mboya and T-Mall branches.

17. He states that in further breach of the Franchise Agreement, the plaintiff has set up a franchise store at Greenspan Mall in Nairobi from which it has set up a signage bearing the 1st defendant's trademark and is selling products initially supplied by the 1st defendant for sale at Kiambu store.

18. It is the 1st defendant's case that as a result of the breach of Franchise Agreement, it issued notice to the plaintiff on 19th December 2019 for the immediate termination of the Franchise Agreement and required the plaintiff to immediately cease operations and activities at Greenspan Mall, Nairobi but that in total disregard to the termination notice and in further breach of the Franchise Agreement, the plaintiff continues to infringe upon the 1st defendant's Trade Marks.

19. He states that the 1st defendant's reputation and goodwill is likely to be negatively affected unless the orders sought are granted.

The plaintiff's response to the application dated 16th January 2020

20. Through the supplementary affidavit sworn on 24th January 2020, the plaintiff's deponent, **James Mutitu Mworira**, denies the allegation that the plaintiff breached the terms of the Franchise Agreement and states that the 1st defendant's claims are founded on falsehoods and misrepresented of facts.

21. He denies the claim that the amount of Kshs 23,642,167.55 is due to the 1st defendant under the Guarantee and states that the plaintiff can only remit money for goods/stock sold. He states that all due invoices have been settled and that no amount is outstanding.

22. He further states that in line with the provisions of the Franchise Agreement, the supplied products remain the exclusive property of the 1st defendant secured by the Bank Guarantee and that the plaintiff becomes the legal owner of the same upon payment in full, of all fees and sums due.

23. He avers that the plaintiff's inventory shows that the 1st defendant's consigned products valued at a total of kshs 10,916,216 and are insured and still exclusively owned by the 1st defendant in which case the calling of the bank Guarantee is unjustified and would amount to double payment in the 1st defendant's favour.

24. He states that the Bank Guarantee is expressly restricted to only the amount of proceeds of the products sold and is personal to the 1st defendant. He maintains that the 1st defendant is not entitled to call for the Bank Guarantee given the fact that the plaintiff has remitted all the sums due and that there are no outstanding invoices to warrant the calling of the Bank Guarantee.

25. He points out that the 1st defendant has also not clarified the specific amount that they are seeking in the Bank Guarantee and that the Guarantee Agreement stipulates that the 2nd defendant should not pay until the figure is clarified.

26. He further states that the plaintiff secured a space with Tusker Mattresses Greenspan Mall (hereinafter "**Tuskys**") purely for purposes of local advertising and promotion of the franchised products and that as a result, all the sales done in the course of the advertisements and promotions were accounted for a part of the Kiambu Branch Stock. He adds that the letter of offer for space issued by Tuskys indicates that the space would be used only for purposes of material advertising and promotion of the 1st defendant's products.

27. He avers that the Franchise Agreement at Clause 10.2(a) expressly grants authority to the plaintiff to conduct local advertising programs to the extent that the plaintiff deems necessary and that Clause 5.4 thereof allows the plaintiff to spend a total amount of its gross revenue per quarter for such local advertising sales and public relations programs for the franchised store.

28. He states that the Franchise Agreement does not provide that local advertising shall be done in the vicinity of the franchised store and that definition of the word vicinity is relative. He avers that the Franchise Agreement at Clause 16.2 grants the plaintiff rights to use the 1st defendant's Intellectual Property and use of its system.

29. He further avers that the allegation that the plaintiff will continue to enter into contracts with third parties on the 1st defendant's behalf is speculative and unsubstantiated as to date no complaint or customer survey report to that effect has been availed to ascertain the claim of

reputational damage.

Interim orders

30. When this matter came up for hearing for the first time on 27th December 2019, this court (differently constituted) granted temporary orders to restrain the 1st defendant from terminating the Franchise Agreement or closing the franchised stores and/or advertisement outlets pending the hearing and determination of the application. On 10th January 2020, this court ordered for the withholding of the payment of money held under the Guarantee pending the hearing and determination of the application.

31. Parties thereafter filed and highlighted their respective submissions to both applications which I have carefully considered. The 2nd and 3rd defendants are not directly involved in the dispute herein and that they opted not to participate in the submissions.

Analysis and determination

32. The main issue for determination is whether the plaintiff and the 1st defendant have made out a case for the granting of orders of injunction sought in their respective applications. The principles governing the granting of orders of injunction are well settled. The applicant must satisfy the conditions laid down in the case of **Giella v Cassman Brown & Company Ltd (1973) EA 358** and show that he has a prima facie case with a probability of success and that he stands to suffer irreparable damage if the order of injunction is not granted. If the court is however in doubt on the foregoing two conditions, it will decide the matter on the balance of convenience.

33. The principles were restated in **Nguruman Limited v Jan Bonde Nielsen & 2 Others**, CA NO. 77 OF 2012, together with the mode of their application as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

(a) establish his case only at a prima facie level,

(b) demonstrate irreparable injury if a temporary injunction is not granted, and

(c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.

34. In **Kenya Commercial Finance Co. Ltd v Afraha Education Society** [2001] Vol. 1 EA 86 it was held:

“If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent 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. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. 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.”

35. I will now turn to consider if the applications meet the threshold set in the above cited cases.

Prima facie case,

36. In the case of **Mrao Ltd v First American Bank of Kenya Ltd** (2003) eKLR, the Court of Appeal set out what amounts to a prima facie case and held that:

“....A prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of the Applicant’s case upon trial....it is a case 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 from the latter.... ”

37. In the present case, both the plaintiff and the 1st defendant have applied for orders of injunction while accusing each other of breaching the terms of their Agreement. The two applications can be said to be two sides of the same coin meaning that the granting of orders in one application could mean the rejection of the other application. The 2nd application is in essence a counter application to the first one and should have, in an ideal situation, been a response to the 1st application.

38. I note that it was not disputed that the plaintiff entered into a Franchise Agreement with the 1st defendant on 8th February 2019. It was further not disputed that through a letter dated 19th December 2019, the 1st defendant informed the plaintiff of the termination of their said Franchise Agreement citing breach of its terms.

39. The plaintiff argued that even though the Franchise Agreement recognizes the rights of the parties to negotiate whenever a dispute arose, the 1st defendant did not avail to them that option and insisted on terminating the Agreement thereby leaving them with a choice but to seek court's intervention. It was the plaintiff's case that under the Agreement, the 1st defendant was required to give them 90 days' notice of the termination, a provision which the 1st defendant did not comply with. The plaintiff argued that the reasons advanced for the summary termination of the Agreement were not valid as the alleged material breaches of the Agreement were not proved. The plaintiff contended that what the 1st defendant referred to as a new franchise store at Tuskys was not a store but a local promotional/advertisement outlet that was permitted under the Clause 10.2(a) of the Agreement. The said clause stipulates as follows:

Franchisee shall spend proportionately to match the actual Gross Revenue, the Local Advertising spend pursuant to Clause 5.4 for such advertising and promotion in the vicinity of the franchised store.

40. According to the plaintiff, their activities of Tuskys do not amount to the operation of a store within the meaning of the term 'Franchised Store' under the Agreement which defines a Franchised Store to mean ***the premises, or store or space at the Approved Location at which the Franchisee manages and operates under the system or any other business activity agreed with the Franchisor.*** They therefore maintained that the termination of their Agreement without notice on the basis that they had opened a store at Tuskys is unfair and cannot hold.

41. The plaintiff maintained that they had invested heavily in the two franchised stores which are currently two ongoing concerns and that the 1st defendant could not terminate their operations midstream without causing them huge financial losses. They further submitted that no payment was due to the 1st defendant under the Guarantee since under Clause 6.7 of the Agreement, all legal ownership of the products in the Franchised stores remain the 1st defendant's property and that the plaintiff is only accountable to the proceeds of the sales.

42. Clause 6.7.1 of the Agreement stipulates as follows:

Legal ownership of the products:

6.7.1. The product will reside at Franchisee's Franchised Store and, subject to Clause 6.6, remain the exclusive property of the Franchisor, secured by a Bank Guarantee.

43. It was therefore the plaintiff's case that its application meets all the three part test of the principles of injunction.

44. On its part, the 1st defendant maintained that it was entitled to terminate the Agreement summarily citing material and irremediable breach of the Agreement. The 1st defendant accused the plaintiff of denying its officers access to the accounts, lack of accountability and transparency in sales reports and the opening of an unauthorized store as Tuskys. It was the 1st defendant's case that the actions of the plaintiff and the continued use of its Trademark in unauthorized stores is likely to negatively affect its reputation, goodwill and brand. For this argument, the 1st defendant relied on the decision in ***Style Industries Limited v Sana Industries Co. & Another*** [2017] eKLR.

45. A determination of the applications will hinge on the determination of the issue of whether 1st defendant was entitled to terminate the Agreement. I am satisfied that both parties have established that they have a prima facie case against each other as they have presented very compelling and arguable grounds for the granting of the injunctive orders sought.

Irreparable Loss

46. Irreparable loss means injury that cannot be adequately compensated in damages. As I have already stated in this ruling, the existence of a prima facie case is not itself sufficient to warrant the granting of an order of injunction and the applicant should further show that *irreparable injury* will occur to him if the injunction is not granted. The applicant must show that there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

47. In the present case, I find that it will not be necessary for this court to make a finding on the aspect of irreparable loss as a condition for granting the injunctive orders since Clause 27.3 of the Agreement permits either party to the agreement to seek an injunctive or equitable relief without the necessity of proving adequacy of money damages. The said Clause stipulates as follows;

Injunctive Relief: Either party will be entitled to injunctive or other equitable or judicial relief, without the necessity of proving the inadequacy of money damages as a remedy, without the necessity of posting a bond, and without waiving any other rights or remedies at law or in equity, for any actual or threatened material breach or violation of this agreement of the Standards.

Balance of convenience

48. In determining if the *balance of convenience tilts in favor of an applicant, the court takes into account the consequences of disallowing the application for an injunction* if the suit is ultimately decided in favor of the applicant. If the inconvenience caused to the applicant would be greater than that which would be caused to the respondent if an injunction is granted then the balance of convenience tilts in favor of the applicant.

49. This court alive to the fact that in granting temporary orders of injunction pending the hearing of the main suit, it must be cautious not to make conclusive findings over the dispute that may have the effect of determining the entire dispute before hearing the merits of the case.

50. In the present case, it was not disputed that the plaintiff's request to be allowed to operate a Franchised Store at Tuskys was rejected by

the 1st defendant. In the circumstances of this case, I find that the act of opening what it calls a promotional/advertisement shop, almost immediately after its request to open a franchise store at Tuskys was rejected by the 1st defendant was the proverbial last straw that broke the camel's back and precipitated the instant dispute.

51. In my humble opinion, a franchise agreement places a duty on a franchisee to conduct its activities above board and in consultation with and/or consent the franchisor in order to avoid incidents of suspicion that can give rise to the kind of situation that parties herein now find themselves. I am however of the humble view that it is not too late for the parties to reconsider their positions and find an amicable way of resolving their differences considering the huge investments that each one of them has put into their respective businesses.

Guarantee

52. On the issue of the amount of money held under the Guarantee, I note that even though Clause 6.7.2 and 6.7.3 of the Agreement stipulate that and that the Franchisor will require a separate Bank Guarantee for each Franchised store guaranteeing an amount not less than KES 30,000,000 (Thirty million) per Franchised Store unless otherwise agreed in writing by the parties. The Clauses further provide that the Franchisee must ensure that each respective Bank Guarantee is valid and existing throughout the operation of each respective Franchised Store; and further that The Franchisee will take steps to renew each Bank Guarantee at least one (1) month prior to its expiry and will immediately provide the Franchisor with a copy of the reissued Bank Guarantee. In the present case, was not clear if the Guarantee had been renewed as at the time of the hearing of the application on 10th January 2020, less than one month to its reported expiry date being 28th February 2020.

53. The 1st defendant argued that it was entitled to call up the Guarantee, unconditionally upon breach, by the plaintiff, of the terms of their agreement. In the circumstances of this case, having noted that both the plaintiff and the 1st have established prima facie cases, I find it will be premature to hold, at this interlocutory stage without first hearing the merits of the parties' cases. that an irremediable breach of the agreement has occurred thereby warranting the calling up of the Guarantee. For this reason and considering the 1st defendant's apprehension that the Guarantee will, in terms of the Agreement expire on or about 28th February 2020, I find that it will be just to order that the amount stated to be currently due under the Guarantee be deposited in court as security pending the hearing and determination of the main suit.

54. Having regard to the circumstances of this case and observations and findings that I have made in this ruling, I find that the appropriate orders to make in respect to both applications are as follows:

a) Pending hearing and determination of this suit a temporary order or injunction is hereby issued to restrain the 1st defendant/respondent from terminating the franchise agreement dated 8th February 2019, closing the franchised stores operated by the plaintiff in Thika at Masha Heights and in Kiambu at the Kiambu Mall or in any other manner whatsoever interfering with the plaintiff's business operations currently being undertaken at the said franchised stores pursuant to the franchise agreement dated 8th February 2019.

b) Pending hearing and determination of this suit, a temporary order of injunction is hereby issued to restrain the plaintiff, whether by itself, directors, officers, employees, servants, agents, successors and/or assigns from advertising, promoting, displaying, selling and/or offering for sale, or otherwise using or dealing with the 1st defendant's trademarks TM No. 68985 "Text book Centre" (name and logo) and TM No. 68202 "TBC"(name) or Text Book Centre Intellectual Property as defined under the Franchise Agreement dated 8th February 2019 between the plaintiff and the 1st defendant at Greenspan Mall, Nairobi or at any other location other than the franchised stores listed in (a) above.

c) Pending the hearing and determination of the main suit, the sum claimed to be due to the 1st defendant under the Guarantee and held by the 2nd defendant being kshs 21,487,520 be deposited in court, as security, within 3 days from the date of this ruling.

d) The costs of both applications shall abide the outcome of the main suit.

e) Mention on 27th February 2020 for further directions.

Dated, signed and delivered in open court at Nairobi this 25th day of February 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Ochieng for Njengo for the plaintiff.

Mr. Kuyo and Monceri for 1st defendant.

Miss Mungai for Muraguri & Mburu for the 2nd and 3rd defendants respectively.

Court Assistant – Sylvia