



Kings Acre Developers Limited v Amani Development Company Limited & another (Environment and Land Case E020 of 2024) [2025] KEELC 6136 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6136 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E020 OF 2024
AY KOROSS, J
SEPTEMBER 23, 2025**

BETWEEN

KINGS ACRE DEVELOPERS LIMITED PLAINTIFF

AND

AMANI DEVELOPMENT COMPANY LIMITED 1ST DEFENDANT

ABIB & ASSOCIATES ADVOCATES 2ND DEFENDANT

RULING

1. This is a ruling in respect of notice of motion dated 11/01/2024 filed by the plaintiff, where it seeks the following orders from this court: -
 - a. Spent.
 - b. Spent.
 - c. That a temporary injunction does issue restraining the defendant, its agents, servants, employees, assigns and/or personal representatives from attaching, repossessing, selling, alienating, disposing off, transferring or dealing with any of the properties erected on the suit property, L.R. No. 12715/100 situated in Syokimau, Machakos County pending the hearing and determination of the suit herein.
 - d. That further in the alternative and without prejudice to the foregoing, pending the hearing and determination of this suit, this honourable court be pleased to order and/or direct the maintenance of the status quo in terms of the occupation of the suit premises pending the hearing and determination of this suit.
 - e. That mandatory orders do issue compelling the interested party herein to produce any and all documents related to the joint venture agreement and subsequent exit agreement entered into by the parties herein.



- f. That the costs of this motion be provided for.
2. The motion is supported by the grounds set out in the body thereof and the plaintiff's affidavit sworn by Liban Mahdi, on 11/01/2024.
 3. A summary of the grounds in support of the motion are that a) on or about the year 2016, the plaintiff and defendant entered into a joint venture (JV) agreement for the construction of townhouses on L.R. No. 12715/100 (suit property) situated in Syokimau, Machakos County, b) the JV led to the registration of a special purpose vehicle private company by the name of Amani Village Limited of registration No. PVT/2016/010537, in which the plaintiff and defendant were registered as shareholders; and
 4. C) The terms of the agreement were for the construction of 82 units, 59 of which would be allocated to the defendant and 23 would be allocated to the plaintiff, this being dependent on their shareholding in Amani Village Limited and capital contribution made to the project, d) to execute the said project, the plaintiff entered into a construction agreement with Asal Builders Limited dated 1/03/2016 for the construction and maintenance of 80 maisonettes at the cost of Kshs. 504, 790, 160/-; and
 5. E) The total cost of the construction of each house was estimated to be Kshs. 6, 309,877/-, f) The final inspection of the project was conducted on 3/07/2018, where the contractor's work was assessed and considered to have been satisfactorily constructed and accepted. The contractor's work was valued at Kshs. 78, 890, 996/-, g) due to the delays in completion of the project, the consequent breach of contract and the losses, the plaintiff voluntarily opted to exit the said JV agreement, on certain terms and conditions; and
 6. H)The defendant's have in bad faith continued to be in breach of the said contracts and have not bothered to make good their end of the bargain, i) the interested party (IP) as enjoined herein was the firm of advocates in conduct of the said transactions between the parties, up until the voluntary exit from the agreement by the plaintiff and has failed to provide copies of the documents despite the constant reminders particularly so by a letter dated 24/02/2023.
 7. The IP entered an appearance but did not oppose the motion, but the defendant filed grounds of opposition dated 10/07/2024 that stated: -
 - a. The motion is misconceived, incompetent, fatally and incurably defective.
 - b. The plaintiff's suit is a fishing expedition and is wrongfully invoking the jurisdiction of this court to aid it in putting its case together.
 - c. The alleged JV agreement upon which the suit is premised is a mysterious and imaginary document that is incapable of sustaining any legal suit, and the plaintiff has not demonstrated how the defendant has breached the non-existent JV agreement.
 - d. Without prejudice to the foregoing, if the purported JV agreement was entered into sometime in the year 2016, no legal suit founded on such a contract can be sustained, given that the alleged cause of action would have arisen more than 6 years ago. The suit is automatically time-barred.
 - e. The above notwithstanding, the plaintiff has failed to demonstrate its contribution (if any) to the purported JV agreement through which it would derive the right to the orders being sought.
 - f. The plaintiff has not demonstrated that the suit property belongs to the defendant.



- g. The purported exit agreement annexed in support of the plaintiff's reliefs is unexecuted, thus unable to confer any legal rights to either of the parties alluded therein.
 - h. The plaintiff has failed to demonstrate how the injury/damage which is likely to be suffered is incapable of being compensated by an award of damages.
8. Despite court directions, only the written submissions by the law firm of Ms. Akenga Kigada Advocates for the defendant, dated 25/10/2024, were received by this court, and this court is grateful to counsel for the invigorating submissions in that respect. Thus, having considered the motion, its grounds, affidavit, and grounds of opposition and the defendant's submissions, the issues for determination are whether the motion has met the legal threshold to warrant the grant of interlocutory reliefs and whether the IP should be compelled to release documents to the plaintiff. These two issues will be handled consecutively shortly.

I. Whether the motion has met the legal threshold to warrant the grant of interlocutory reliefs

9. On matters of legal framework to entertain the motion, this court's invitation to intervene has been made pursuant to the provisions of Order 40 Rule 1 of the Civil Procedure Rules (CPR), which empowers this court to grant an injunctive relief by stating as follows: -

“Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
10. Interlocutory injunctions are meant to preserve the substratum of the suit pending the hearing and determination of the suit, and the grant of interlocutory injunctions is not meant to occasion prejudice to any party.
11. The decision of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR reminds this court that its power in an application for interlocutory injunction is discretionary. Such discretion is judicial, and as is always the case, judicial discretion has to be exercised based on the law and evidence.
12. The principles that guide this court in determining whether a temporary injunction ought to be issued were settled in the celebrated case of *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358. By this decision, it is trite law that an applicant has to meet the threshold of the 3 tests, which are inter alia, establish a prima facie case; demonstrate irreparable injury; and that the balance of convenience tilts in its favour.



13. These principles were restated in the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR in the following manner: -

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

14. When determining an interlocutory application such as the one before this court, the court has to be careful not to prejudice a party by making conclusive findings of fact or law on substantive issues that are the preserve of trial as was stated by Ringera, J (as he then was) in *Airland Tours & Travel Limited vs. National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2002.

15. The 1st test to establish is whether the plaintiff has a prima facie case, and the definition of the term was defined by the Court of Appeal decision of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR, thus: -

“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.”

16. Typically, on the preponderance of probabilities, the onus is on the applicant to prove a prima facie case. In this case, and as stated in the grounds of opposition and rightfully submitted by the defendant’s counsel, the plaintiff has omitted to attach a copy of the alleged JV agreement allegedly executed by the parties. Moreover, the alleged mutual agreement for final settlement and exit allegedly between the parties is unexecuted. Worse is, the plaintiff has not demonstrated the interest the parties have in the suit property, as a title document thereof has not been tendered to this court or at most, a certificate of official search.

17. Furthermore, and as pointed out by the defendant’s counsel and correctly so, the construction contract in respect of the said units on the suit property indicates the parties thereto as Homs Group International, described as “the owner” and Asal Builders Ltd, described as “the builder”. These persons are strangers in the proceedings, and at this juncture, this court has been unable to decipher the connection between these parties and or contract to the parties to this suit. In the circumstances and being guided by established judicial precedence, this court finds the plaintiff has not met the 1st test and need not say more on this issue. The injunctive relief fails.

II. Whether the IP should be compelled to release documents to the plaintiff.

18. Concerning the law on this issue, Section 22 (a) of the *Civil Procedure Act*, which is anchored in Article 35(1) (b) of *the Constitution* of Kenya, vests this court with jurisdiction to make discovery, inspect documents and order production of documents, amongst many others. These provisions state as follows: -



Article 35(1)(b)

(1)

- 1) Every citizen has the right of access to—
 - (a)
 - (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

Section 22 of the *Civil Procedure Act*: -

“Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

19. As read together, these provisions of the law grant this court wide discretionary powers in an application for discovery, which must be exercised judiciously. The essence of discovery is to ensure that relevant documentary material is made available to assist a party with a case and ensure that the underpinnings of access to justice and fair disposal of the suit are achieved. In this regard, persuasion is derived from the decision of *Oracle Productions Limited v Decapture Limited & 3 others* [2014] KEHC 8658 (KLR) which held: -

“The true purpose of discovery is to level the litigation field, to expedite hearing, reduce costs and allow parties to gauge the case they will face at the trial.”

20. Further, Halsbury’s Laws of England Vol 13, paragraph 1 states as follows on the importance of the discovery of evidence: -

“The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.”

21. In these circumstances, the plaintiff’s case seems to hinge on privity of contract and contends that these documents that created relations between the parties are with the IP, who was their joint advocate in the dealings between them and has custody of the documents, including the relevant contracts. The IP has not disputed this fact, as it has not opposed the motion despite being served.



22. The documents as filed by the plaintiff obviously reveal that it does not have the contracts with it (if true). The defendant contends these contracts are time-barred; nevertheless, it has equally not provided these documents to this court. It is worth observing that even if the defendant contends these documents are time-barred and the suit is an abuse of court process, and there is a likelihood it may seek to strike out the entire suit on that basis, its application (if at all) will have to avail these contracts for consideration by this court. Furthermore, the defendant has not objected to the discovery. In the circumstances, this court finds that the plaintiff has made a case for the discovery of documents.
23. In the end and for the above reasons and findings, this court hereby issues the following orders: -
- a. The interested party shall, within 60 days hereof and at the parties' cost, under oath, deliver to the plaintiff and defendant all documents in its possession related to the joint venture agreement and subsequent exit agreement entered into by the parties herein if any.
 - b. Costs of the motion shall abide by the outcome of the main suit.
 - c. This matter shall be mentioned for pretrial directions.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 23RD DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

23.09.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Akenga Jackson for 1st defendant.

M/s Wanjau holding brief for Mr. Hassan for the plaintiff/applicant.

Mr. Otieno for the Interested Party.

Ms Kanja- Court Assistant.

