



Rabow Company Limited v Lucky Bus DMCC & 13 others; Betting Control and Licensing Board (Interested Party) (Commercial Case E485 of 2024) [2025] KEHC 76 (KLR) (Commercial and Tax) (9 January 2025) (Ruling)

Neutral citation: [2025] KEHC 76 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E485 OF 2024
A MABEYA, J
JANUARY 9, 2025**

BETWEEN

RABOW COMPANY LIMITED PLAINTIFF

AND

LUCKY BUS DMCC 1ST DEFENDANT
AFREEKEN TECHNOLOGY LIMITED 2ND DEFENDANT
KAPLAN & STRATTON ADVOCATES 3RD DEFENDANT
THE REGISTRAR OF TRADEMARKS 4TH DEFENDANT
SAFARICOM PLC 5TH DEFENDANT
REGISTRAR OF COMPANIES 6TH DEFENDANT
KEXIAN XIAO 7TH DEFENDANT
GE LI 8TH DEFENDANT
HANG MING 9TH DEFENDANT
JACINTA MORAA 10TH DEFENDANT
PURITY NJERI 11TH DEFENDANT
HONGDONG CHEN 12TH DEFENDANT
XU PENGFEI 13TH DEFENDANT
HANMENG QIU 14TH DEFENDANT

AND



BETTING CONTROL AND LICENSING BOARD INTERESTED PARTY

RULING

1. By a Motion on Notice dated 14/11/2024, Lucky Bus DMCC and Bangbet Ltd (“the applicants”) moved the Court under sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* and Order 42 Rule 6 of the Civil Procedure Rules.
2. In the Motion, the applicants sought two substantive orders; firstly, that the Betting Control and Licensing Board (“the BCLB”) be directed to enforce Orders 4(i) & (ii) of the order of 1/10/2024 (“the said order”) by suspending the operations of Rabow Ltd’s (“the respondent”) under the Bookmakers Licence No 0000672. Secondly, that Safaricom PLC, Stanbic Bank Kenya Ltd and the BCLB be directed to ensure compliance with order no. 4(v) of the said order.
3. The grounds were set out in the body of the Motion and the supporting affidavit of David Kabue Gichuhi sworn on 14/11/2024. The grounds were that the 2nd applicant is a holder of a Bookmakers Off-the-Course Licence No. 0000714 and Public Gaming Licence No. 0000413 operating under the brand name “BANGBET”, a trade name registered under TM No. 109421. That vide a ruling of 1/10/2024 (sic), the Court confirmed that prima facie, the trade mark belonged to the 2nd applicant.
4. That the Court restrained the respondent from dealing under Licence No. 0000672 or utilizing the trade mark BANGBET. The respondent was also restrained from trading under the Licence No. 0000672 pending the determination of Notice of Opposition application to trade mark No. 114757. That there were also freezing orders on Paybill Nos. 937552 and 999880 held with Safaricom and Stanbic Bank in the name of BETMANIA.
5. That the said orders had not been appealed against or set aside. That despite as aforesaid, the respondent continued to disobey and disregard the said orders. That the BCLB has been unable to enforce the said orders because they were not directed at it. That it was therefore imperative that the orders sought be granted as supplemental to the previous ones for compliance. That the application had been made timeously.
6. The respondent opposed the application by way of a Preliminary Objection dated 13/12/2024. It contended that section 4 of the *Betting, Lotteries and Gaming Act* grants exclusive authority to the BCLB to issue, vary, suspend or cancel licences as well as inquire into complaints against licensees or permit holders. That the orders offend that section of the law, that the applicants had failed to utilize the dispute resolution mechanisms set out under that Act. That the application is an abuse of the court process and was but an attempt to vary or review the orders of 1/10/2024.
7. Safaricom PLC opposed the Motion through the replying affidavit of Daniel Ndaba sworn on 19/12/2024. He confirmed that Paybill Nos. 937552 and 999880 are operated in the name of BANGBET and serviced by Safaricom PLC. That vide the ruling of 26/9/2024, the Court froze the paybill nos. 937552 and 999880. That Safaricom duly froze the paybills accounts on 27/9/2024. That in the premises, the application had been overtaken by events.
8. On 17/12/2024, the Court directed that the objection by the respondent be heard together with the Motion but be determined first. The Court also directed that further replying affidavits be filed within 7 days and submissions within 10 days thereafter. The Court set the ruling for 15/1/2025. The timelines set by the Court expired on 3/1/2025. By the time of writing this ruling, only Safaricom PLC had filed a replying affidavit and no submissions had been filed.



9. I have considered the record. It is the preliminary objection that is to be determined first. The principles applicable to objections were set out in the case of *Mukisa Biscuits Manufacturing Company vs. West End Distributors Ltd (1969) EA*. The current objection fits the definition of a preliminary objection since it is based purely on a point of law.
10. The objection is to the effect that the applicants have not exhausted the dispute resolution mechanisms under the *Betting, Lotteries and Gaming Act* Cap 131, Laws of Kenya (“the Act”). That under the Act, it is the BCLB which has exclusive authority to entertain complaints regarding gaming and lotteries. That the application amounts to a review of the orders of 26/9/2024.
11. My understanding of the applicants’ Motion was that, the orders of 26/9/2024 had not been complied with. That although the respondent was restrained from doing certain things, it nevertheless persisted in doing so. In particular, that the freezing orders were to subsist pending BCLB making a determination on some Notice of Opposition before it.
12. Section 4 of the Act provides: -
 - “ 1) The Board shall have power-
 - a. to issue licences and permits in accordance with this Act and any regulations made thereunder,
 - b. during the subsistence of a licence or permit, to vary, or for good reason cause to suspend or cancel it
 - c. To inquire into complaints against licensees or permit holders....”
13. From the foregoing, it is clear that the respondent’s contention as to the jurisdiction of BCLB is correct. However, in the present case, the issue before Court is not a complaint under the Act but on an order made by this Court. The Court notes that there are still proceedings pending before the BCLB, that is, if order no. 4(ii) of the order of 26/9/2024 is anything to go by. The order was made with deference to the jurisdiction of BCLB in mind.
14. The view which this Court takes is that, the Motion by the applicants seek to facilitate compliance of the orders of this Court of 26/9/2024 and not to usurp the powers of BCLB under the Act. It is worthy to note that BCLB was named an interested party in these proceedings. It was served before the orders of 26/9/2024 were made.
15. The Court is aware of the doctrine of exhaustion. Indeed, every Court is called upon to uphold the same at all times. However, in the present case, a determination has already been made vide the ruling of 26/9/2024. That decision has not been set aside.
16. In view of the foregoing, the Court finds no merit in the objection and dismisses the same.
17. Turning to the application, the applicants’ case is that the orders of 26/9/2024 have not been complied with. That is was necessary to make supplemental orders for their compliance.
18. The Court has considered the record in its entirety. It is not true that those orders have been complied with in totality. From the affidavit sworn on behalf of Safaricom PLC, it would seem that the paybill numbers were frozen on 27/9/2024 by Safaricom PLC. There was no response to the averments in that affidavit. In the premises, the Court holds that prayer no. (c) of the Motion is not merited.



19. As regards prayer no. (b), it will be a mockery of justice if an order of Court is not obeyed. It is clear that either through negligence or otherwise, although BCLB was made an interested party in the suit, no orders were sought against it in the earlier application that resulted in the orders of 26/9/2024.
20. Since the said orders of 26/9/2024 are still in force and have not been complied with, the applicant had the choice either to cite the respondent for contempt or seek that BCLB ensures that they are complied with since it is the regulatory body.
21. Since BCLB did not oppose the application, I see no reason why the order sought should not be granted. Accordingly, the Motion dated 14/11/2024 is allowed in terms of prayer no. (b).

It is so ordered.

SIGNED AT NAIROBI THIS 9TH DAY OF JANUARY, 2025.

A. MABEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JANUARY, 2025.

F. GIKONYO

JUDGE

