



**Diamond Trust Bank Kenya Limited v Gab International  
Construction Company Ltd & 2 others (Civil Suit E469 of 2023)  
[2025] KEHC 720 (KLR) (Commercial & Admiralty) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 720 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
CIVIL SUIT E469 OF 2023  
A MABEYA, J  
FEBRUARY 3, 2025**

**BETWEEN**

**DIAMOND TRUST BANK KENYA LIMITED ..... PLAINTIFF**

**AND**

**GAB INTERNATIONAL CONSTRUCTION COMPANY LTD . 1<sup>ST</sup> DEFENDANT**

**ABDIFATAH ALI ADAN ..... 2<sup>ND</sup> DEFENDANT**

**NOOR HAJI ALI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff's Notice of Motion dated 22/9/2024 was brought pursuant to the provisions of Section 16 of the *Hire Purchase Act* cap 307, Order 40 rule 1 and 10, Order 51 Rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act*. It sought the following prayers: -
  - a. spent
  - b. spent
  - c. spent
  - d. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an injunction barring the Defendants, their agents and/or servants from holding, using, charging, advertising for sale, selling by public auction or by private treaty and/or otherwise handling, dealing or interfering with the Plaintiff's ownership of motor vehicle registration number KCC 486Z, KCC 494Z, KCC 911Z, KCC 022P, KCC 028P, KCC 030P, KCC 031P,



KCC 485Z, KCC 493Z, KCC 495Z, KCC 901Z, KCC 908Z, KCC 492Z, KCC 024P, KCC 909Z, KCC 910Z, KCC 016P, KCC 017P and KCC 021P 165K in any manner whatsoever.

- e. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an interim mandatory injunction compelling the Defendants, their agents and/or servants to release motor vehicle registration number KCC 486Z, KCC 494Z, KCC 911Z, KCC 022P, KCC 028P, KCC 030P, KCC 031P, KCC 485Z, KCC 493Z, KCC 495Z, KCC 901Z, KCC 908Z, KCC 492Z, KCC 024P, KCC 909Z, KCC 910Z, KCC 016P, KCC 017P and KCC 021P to the custody of the Plaintiff its servants and/or its agents for purposes of inspection.
  - f. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an interim mandatory injunction compelling the Defendants, their agents and/or servants to release motor vehicle registration number KCC 486Z, KCC 494Z, KCC 911Z, KCC 022P, KCC 028P, KCC 030P, KCC 031P, KCC 485Z, KCC 493Z, KCC 495Z, KCC 901Z, KCC 908Z, KCC 492Z, KCC 024P, KCC 909Z, KCC 910Z, KCC 016P, KCC 017P and KCC 021P to the custody of the Plaintiff, its servants and/or its agents for preservation and storage.
  - g. That this Honourable Court be pleased to issue an order to the Officer Commanding Station (OCS) Nairobi Central Police Station to assist in compliance with the aforementioned Court order.
  - h. That the costs of the application be provided for.
2. The application was premised on the grounds set out on the face of the Motion and supported by an affidavit sworn by Faith Ndonga a Debt recovery officer with the Plaintiff.
  3. The defendant did not file any response to the application but filed their submissions. The application was canvassed by way of written submissions. The Plaintiff's submissions were dated 3/5/2024 while those of the defendants were dated 9/5/2024.
  4. It was the plaintiff's contention that by a Hire purchase agreement, it extended a hire purchase facility to the 1<sup>st</sup> defendant aggregating to KShs. 58,000,000/= for the purchase of 20 units of Ashok Leyland Tripper trucks. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants were directors and guarantors of the 1<sup>st</sup> defendant.
  5. That the 1<sup>st</sup> defendant routinely defaulted on the monthly instalments and the instalments paid were effected in piecemeal leading to an outstanding aggregated sum of KShs 101,946064.62/= as at 18/7/2023. That the defendants had failed to clear the outstanding amounts. The defendants had refused to return the financed Motor vehicles and the plaintiff was unable to trace the financed motor vehicles for the purposes of repossession, as the defendants had deactivated/removed the tracking system installed by the plaintiff.
  6. As a result, the plaintiff was apprehensive that if the inspection, detention and preservatory orders were not issued, the financed motor vehicles will be transferred, damaged or subjected to depreciation thus defeating the present application and the suit.
  7. Mr. Ondieki learned counsel for the defendants while citing the case of *Giella v Cassman Brown* (1973) EA 358, submitted that the plaintiff had failed to demonstrate that it had a genuine and arguable case which was apparently being infringed by the defendants. That the defendant made payments regularly as required by the agreement and did not breach the terms of the hire purchase. That the monthly payments were interrupted when the trucks developed some mechanical problems prompting



- the defendant to pay the instalments in piecemeal and eventually defaulted when the trucks completely broke down.
8. It was submitted that the loss the plaintiff will suffer is financial in nature which is easily calculable and cannot be classified as irreparable loss. It was argued that the plaintiff was not entitled to the reliefs sought as it sold defective trucks to the defendant and urged the court to dismiss the application for want of merit.
  9. I have considered the application, the affidavit in support and the submissions by Learned Counsel. The issue for determination is whether the plaintiff is entitled to the interlocutory injunction pending the hearing and determination of the suit herein.
  10. Both parties cited principles for granting an interlocutory injunction. These are that an applicant must demonstrate a prima facie case with probability of success, satisfy the court that it would suffer irreparable harm which would not be compensated by way of damages if an injunction is not granted, and if the court is in doubt decide on a balance of convenience. The principles are outlined in the case of *Giella v Cassman Brown (supra)*.
  11. The granting of an interlocutory injunction is a discretionary remedy which if it is to be granted the court evaluates the law and the evidence adduced.
  12. It is evident from the evidence on record that the plaintiff was carrying on a Hire purchase business. The letter of offer dated 7/2/2018, shows that the plaintiff extended hire purchase facilities to the 1<sup>st</sup> defendant aggregating to Kshs. 58,000,000/= for the purchase of 20 units of Ashok Leyland Tripper trucks which were jointly registered in the names of the plaintiff and the 1<sup>st</sup> defendant. The hire Purchase facility was to be repaid in 36 equal monthly instalments aggregating to Kshs. 1,982,303/= at an interest rate of 9.5% plus 4% on a reducing balance. It was a condition of the agreement that an additional 10% p.a would be charged on arrears.
  13. According to the plaintiff, the defendant defaulted in repaying the loan and the culminative outstanding amount as at 18/7/2023 was Kshs 101,946064.62/= which continued attract interest.
  14. In *Mrao Limited v First American Bank of Kenya and 2 others* (2003) eKLR a *prima facie* case was defined as follows: -

“A *prima facie* case in a Civil Case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as 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.”
  15. From the record, the defendant does not dispute the default. The defendant’s contention is that it faults the plaintiff for hiring defective trucks. However, the defendant has not adduced tangible evidence placing liability on the plaintiff. The agreement clearly spelt out the consequences of default by the defendant, the Plaintiff was at liberty to terminate the agreement and immediately repossess and dispose of the financed motor vehicles. The court’s duty is to protect and respect the contracts entered into by the parties and not to rewrite the contract.
  16. In my view, the defendant cannot fail to meet its financial obligation and still expect to retain the motor vehicles. The defendant is expected to pay the money failure to which its right of redemption would fail and the plaintiff rights to sell the property will crystalize.



17. The defendant does not dispute having the trucks neither does it dispute removing the car tracking system from the trucks. The defendant's actions amount to dishonesty. If the defendant was acting in good faith, it ought to have approached the plaintiff and renegotiated the terms of the agreement. However, it failed to do so and in the end decided to defeat the plaintiff rights to the motor vehicles and disabled the tracking devices.
18. The plaintiff remained as the owner of the Vehicles until such a time when the defendant would pay the entire hire purchase price. In case of any default, the plaintiff was entitled to redeem the security by repossessing the motor vehicles to recover the amounts due. This position has however been hampered by the defendant's actions of removing the car tracking system, thus making it impossible for the plaintiff to locate the motor vehicles. In the circumstances, I am persuaded that the plaintiff has established a prima facie case. I thus find in favour of Plaintiff in granting an injunction against the defendant and allowing the Plaintiff the right to repossess the trucks.
19. From the conduct of the defendant, I am not persuaded that the defendant would be in a position to compensate the plaintiff for damages caused from the breach of the agreement the amount due continues to escalate. The defendant also admitted it utilized the trucks in order to make the payments.
20. On the balance of convenience, the subject matter in dispute involve trucks whose value depreciates with time. The amount remains unpaid and the interest continues to escalate. As such, the outstanding amount continue to increase and might outstrip the value of the trucks and with time, the plaintiff will not be in apposition to recover the amount due from the defendants. The balance of convenience clearly lies in favour of the plaintiff and allow the repossession of the trucks to realize the security.
21. For the reasons stated herein above. I find that the plaintiff's application dated 22/9/2024 is merited I allow the same in as prayed.

It is so ordered.

**SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2025.**

**F. GIKONYO**

**JUDGE**

