Gehlot & another v SK Sports and Recreational Limited t/ a Mom3ntum Fitness & 2 others (Commercial Case E118 of 2024) [2025] KEHC 1132 (KLR) (Commercial and Tax) (21 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1132 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE E118 OF 2024

MN MWANGI, J

FEBRUARY 21, 2025

BETWEEN

VIKAS GEHLOT ..... 1ST PLAINTIFF

INTEX CONSTRUCTION LIMITED ..... 2ND PLAINTIFF

AND

SK SPORTS AND RECREATIONAL LIMITED T/A MOM3NTUM FITNESS ..... 1ST DEFENDANT

SAHIL KAKKAR ..... 2ND DEFENDANT

SANIYA KAKKAR ..... 3RD DEFENDANT

RULING

1. The plaintiffs/applicants filed a Notice of Motion application dated 4th March 2024 pursuant to the provisions of Sections 1A, 1B & 63(e) of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 40 Rule 1 of the Civil Procedure Rules 2010, the *Law of Contract Act*, and all other enabling provisions of the law. The plaintiffs seek various orders pending the determination of the main suit. These include orders of temporary injunction restraining the 2nd & 3rd defendants from selling, transferring, or dealing with the shares and assets of the 1st defendant and restraining the defendants from removing, selling, or interfering with specific gym equipment owned by the 1st defendant. They also seek an order directing the Registrar of Companies to register a caveat against the 1st defendant to prevent any changes to its shareholding or structure, an order instructing the CEO of Diamond Trust Bank Kenya Limited to freeze the 1st defendant's bank account No. 030283XXXX, and an order compelling the 2nd defendant to provide a full account of all monies received from the plaintiffs for setting up the 1st defendant.

2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Vikas Gehlot, the 1st plaintiff herein. He averred that in 2017, the 2nd defendant formed SK Sports and Recreational Services Limited, the 1st defendant herein, which trades as Mom3ntum Fitness, where in the 2nd defendant was a majority Shareholder. The plaintiff averred that the 2nd defendant approached him to invest in the said company in exchange of shares. He asserted that over time, he heavily invested into the 1st defendant, including purchasing gym equipment, covering operational expenses, and expanding the company.

3. Mr. Gehlot stated that in 2020, the gym was forced to cease operations due to safety concerns as a result of the Covid-19 Pandemic, which led to increased financial pressure on the business. He further stated that during this period he conscientiously utilized funds from his personal finances and those of the 2nd plaintiff to maintain the 1st defendant. He asserted that he contributed a total of Kshs.14,000,000/= to the 1st defendant since its inception. In addition to the aforesaid financial contributions, Mr. Gehlot contended that the 2nd plaintiff's resources such as legal services, advisory support, procurement assistance and various other operational aspects were utilized extensively by the 1st defendant in its management and administration.

4. He averred that in view of the said arrangements, the 2nd defendant on 26th July 2022 agreed to transfer 60% of the 1st defendant's shareholding to him, which Agreement was formalized through WhatsApp. He deposed that he continued to contribute capital and additional resources to the 1st defendant, but despite multiple follow-ups, the 2nd defendant failed to execute the share transfer documents, leading to a breach of contract. Mr. Gehlot asserted that he is apprehensive that the 2nd defendant will frustrate his ability to recover the monies spent in setting up and supporting the 1st defendant company in the event that the orders sought herein are not granted.

5. In opposition to the application, the defendants filed a Notice of Preliminary Objection dated 9th April 2024 raising the following ground-

    i. That the plaintiffs/applicants' application dated 4th March 2024 offends the provisions of Order 2 Rule 6(1) of the Civil Procedure Rules, 2010 as the same seeks orders of temporary injunction in vacuo with no orders of permanent injunction sought in the filed plaint dated 4th March 2024.

6. The defendants also filed a replying affidavit sworn on 9th April 2024 by Mr. Sahil Kakkar, the 2nd defendant herein. He denied that the 1st plaintiff was ever offered a 60% shareholding in the 1st defendant company, and stated that when he and the 3rd defendant formed the 1st defendant company, they sought capital investments from multiple individuals, including the 1st plaintiff, who contributed funds as a loan, not as an investment for shares. He further averred that no Agreement existed between himself and the 1st plaintiff regarding shareholding, as there was no offer, acceptance, consideration, or intention to form a legal contract.

7. Mr. Kakkar stated that while the 1st plaintiff advanced Kshs.14,000,000/= to the 1st defendant company between August 2017 and May 2022, the said amount was fully repaid by December 2023. In regard to the gym equipment, he stated that it was provided on a lease or purchase basis in early 2023, contrary to the 1st plaintiff's claim that he funded equipment expenses in 2017. He asserted that in filing this suit, the 1st plaintiff is attempting to use the Court to unfairly obtain shares in the 1st defendant company without any justification whatsoever.

8. In a rejoinder, the plaintiffs filed a further affidavit sworn on 15th May 2024 by Mr. Vikas Gehlot, the 1st plaintiff herein. He disputed the 2nd defendant's claim that his contributions to the 1st defendant

company were merely loans, asserting that they were made in exchange of shareholding as can be seen from an email sent to him by the 2nd defendant in 2018, wherein the 2nd defendant shared transfer documents for execution. He contended that the 2nd defendant's claim of a loan advancement, was an afterthought to avoid honouring the agreed share transfer. He averred that the repayment made in late 2023 was an attempt by the defendants to evade transferring 60% shareholding of the 1st defendant to him.

9. The instant application was canvassed by way of written submissions which were highlighted on 26th September 2024. The plaintiffs' submissions were filed on 23rd May 2024 by the law firm of G & A Advocates LLP, whereas the defendants' submissions were filed by the law firm of MJD Associates Advocates on 22nd May 2024.

10. Mr. Amasa, learned Counsel for the plaintiffs relied on the case of Giella v Cassman Brown & Co. Ltd. [1973] E.A. 360, and submitted that the plaintiffs have made out a case for being granted the orders sought herein. In submitting that the plaintiffs have established a prima facie case with a probability of success, Counsel relied on the Court of Appeal case of Mrao Ltd. v First American Bank of Kenya Ltd & 2 others [2003] eKLR, and posited that the WhatsApp conversations between the 1st plaintiff and the 2nd defendant confirm their intention to create legal relations, with clear and certain terms, by agreeing to transfer 60% of the company's shareholding to the 1st plaintiff. He contended that, the 1st and 2nd defendants maliciously and in bad faith breached this Agreement by failing to execute the transfer, giving rise to a cause of action.

11. Mr. Amasa submitted that if the temporary injunction orders sought are not granted, the 1st plaintiff shall be at risk of suffering irreparable harm as the defendants may dissipate, conceal, or transfer the 1st defendant company's assets, making it difficult or impossible for the 1st plaintiff to obtain his rightful shareholding. Counsel further stated that monetary compensation alone cannot adequately remedy the 1st plaintiff's loss, as it includes not only financial investment but also the right to participate in the company's management and profits. He submitted that the balance of convenience tilts in favour of granting the injunctive order sought.

12. Mr. Amasa cited the case of Farid Ahmed Swaleh & another v Mohamed Faki Khatib Practicing as Khatib & Company Advocates [2017] eKLR, and stated that due to the 2nd defendant's fraudulent and concealed dealings, the 1st plaintiff is entitled to true and accurate accounts of all monies received from the plaintiffs for purposes of setting up the 1st defendant.

13. He cited the provisions of Order 2 Rule 6(1) of the Civil Procedure Rules, 2010 and the case of Ngati & 4 others v Mutie & 7 others [2022] eKLR, and submitted that the temporary orders sought in this application are based on declaratory reliefs sought in the plaint and aim to maintain the status quo by preventing the defendants from selling or transferring 60% of the 1st defendant's shares. He argued that the temporary orders are not independent but they are directly tied to the declaratory reliefs. He maintained that they do not exist in a vacuum, as alleged in the defendants' Preliminary Objection. Mr. Amasa argued that the orders sought in the plaint will become moot if the 2nd defendant transfers or sells the 1st defendant's shareholding.

14. Mr. Onyancha, learned Counsel for the defendants cited the case of Giella v Cassman Brown & Co Ltd (supra) and submitted that the plaintiffs are not deserving of the injunctive reliefs being sought in the instant application. He cited the Black's Law Dictionary 8th Edition, 2004 definition of a "contract" and referred to the case of William Muthee Muthami v Bank of Baroda [2014] eKLR cited by the Court in Ali Abdi Mohamed v Kenya Shell & Company Limited [2017] eKLR. He contended that the plaintiffs have failed to specify the exact terms of the offer made to the 2nd defendant, making the 60:40

share split speculative. He argued that the alleged communication does not explicitly refer to shares in the 1st defendant company and that no clear and definite offer capable of immediate acceptance was made.

15. He referred to the case of Bennet, Walden & Co v Wood [1950] 2 All ER 134 cited by the Court with approval in the case of Kessel Homes Limited v John Kimotho Nginga & another [2021] eKLR, and contended that even if an offer existed, there was no clear acceptance by the 2nd defendant. He pointed out that the defendants have since refunded the 1st plaintiff the amount of Kshs.14,000,000/=, which payments were not rescinded, indicating full reimbursement for any loans given. Mr. Onyancha relied on the case of Caleb Onyango Adongo v Bernard Ouma Ogur [2020] eKLR, and stated that there was no mutual Agreement between the 1st plaintiff and the 2nd defendant regarding transfer of shares in the 1st defendant company. Further, that the repeated refunds made by the 1st defendant to the 1st plaintiff indicate that no share transfer was intended.

16. Counsel further stated that the plaintiffs have not provided any evidence, such as a sale Agreement or share transfer document, to support their claim. He asserted that no express or implied contract existed between the parties herein to warrant the plaintiffs being granted the orders sought herein. Counsel relied on the Court of Appeal case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others (supra) and argued that the plaintiffs have not established a prima facie case with chances of success.

17. Mr. Onyancha maintained that since the 1st plaintiff has been refunded all monies received from him, there is no actual or anticipated injury that the plaintiffs stand to suffer that would justify issuing an injunction. In regard to the gym equipment, the defendants contended that it can be valued using the customs declaration form, and for that reason, the balance of convenience tilts in favour of the defendants.

18. Counsel submitted that based on the principles in the cases of Charity Njeri Kanyua v Trevor Kent [2016] eKLR, and Suleiman v Amboseli Resort Ltd [2002] eKLR 589, there would be a lower risk of injustice if the Court declined to issue an injunction. He claimed that granting an injunction, especially freezing the 1st defendant's bank accounts would hinder its business operations and ability to pay taxes to the Kenya Revenue Authority. Mr. Onyancha cited the provisions of Order 2 Rule 6(1) of the Civil Procedure Rules, 2010 and the case of Josephine Chebet Ruto v Stanley K. Chepkwony & another [2017] eKLR, and submitted that having failed to seek orders of permanent injunction in the plaint filed in this suit, the instant application is fatally defective and ought to be dismissed. He relied on the case of International Air Transport Association & another v Akarim Agencies Company Limited & 2 others [2014] eKLR, to support the said position and contended that the plaintiffs have not made out a case to warrant the issuance of freezing orders.

Analysis And Determination.

19. I have considered the instant application, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavit and Notice of Preliminary Objection filed by the defendants, as well as the written submissions by Counsel for the parties. The issues that arise for determination are –

    i. Whether the defendants' Notice of Preliminary Objection should be sustained;

    ii. Whether an order of injunction should issue against the defendants;

    iii. Whether the plaintiffs have made out a case to warrant issuance of freezing orders; and

iv. Whether the 2nd defendant should be compelled to render a true and just account of all monies received from the plaintiffs for purposes of setting up the 1st defendant company.

Whether the defendants' Notice of Preliminary Objection should be sustained.

20. In the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, the Court addressed what constitutes a valid Preliminary Objection as hereunder –

> So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

21. In the said case, Sir Charles Newbold P., stated as follows-

> ... the first matter related to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.

22. The import of the above decision is that a Preliminary Objection should raise a pure point of law, it should be argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. In this instance, the defendants contend that the application herein offends the provisions of Order 2 Rule 6(1) of the Civil Procedure Rules, 2010 in view of the fact that the plaintiffs have not sought an order of permanent injunction in the plaint dated 4th March 2024. Order 2 Rule 6(1) of the Civil Procedure Rules, 2010 provides that –

> No party may in any pleading make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his in the same suit.

23. It is not contested that the plaintiffs have not sought an order of permanent injunction in the plaint filed in this suit. The defendants contend that in view of the said fact, the instant application is fatally defective. I am minded that in order for a litigant to seek a temporary injunction as an interim relief, a substantive prayer for permanent injunction or similar relief must be sought in the plaint. In the case of Ngati & 4 others v Mutie & 7 others (supra) cited by the plaintiffs herein, the Court when considering this issue made the following observation –

> In my considered view, the orders of temporary injunction can only be anchored on some foundation. For clarity, the foundation would be a substantive suit filed by the Applicant and in respect of which same has inter-alia sought for orders of permanent injunction or appropriate Declaratory Reliefs.

24. Further, in Yang Guang Property Design & Manufacturing Limited v China Wu Yi Company (K) Limited [2021] KEHC 5899 (KLR), the Court in respect to this issue held that –

> ...it is now well settled that for a litigant to seek temporary injunction as an interim relief, the applicant must have included a substantive prayer for permanent injunction or similar relief in the plaint. There are of course instances where departure would be excusable, to prevent the ends of justice from being defeated, under Section 63(c) and (e) of the *Civil Procedure Act* or Order 40 Rules 1 and 2 of the Civil Procedure Rules. (Emphasis added).

25. In the instant application, the plaintiffs have sought inter alia for orders of temporary injunction restraining the 2nd & 3rd defendants from selling, transferring, or dealing with the shares and assets of the 1st defendant and restraining the defendants from removing, selling, or interfering with specific gym equipment owned by the 1st defendant. On perusal of the plaint in this suit, it is evident that the plaintiffs seeks inter alia for orders that the Court issues a declaration that there exists a valid and enforceable Agreement for transfer of the 1st defendant's shareholding between the 1st plaintiff and the 2nd defendant. The plaintiffs claim that the 2nd defendant is in breach of the said Agreement. The 1st plaintiff in the said plaint prays for an order for the 2nd defendant to value the 1st defendant company, determine the value of its 60% shareholding and transfers the said value to him (1st plaintiff).

26. Given the said circumstances, I agree with Counsel for the plaintiffs that the interim injunctive being sought herein are essentially meant to maintain the status quo pending the determination of the suit so that in the event the Court finds that the plaintiffs' suit is merited, an order for valuation of the 1st defendant company and determination of the value of its 60% shareholding can be made.

27. It is also noteworthy that other than the injunctive reliefs sought in the instant application, the plaintiffs also seek an` order directing the Registrar of Companies to register a caveat against the 1st defendant to prevent any changes to its shareholding or structure, an order instructing the CEO of Diamond Trust Bank Kenya Limited to freeze the 1st defendant's bank account No. 030283XXXX, and an order compelling the 2nd defendant to provide a full account of all monies received from the plaintiffs for setting up the 1st defendant.

28. Accordingly, it is my finding that the orders sought in the plaint constitute instances where departure would be excusable, to prevent the ends of justice from being defeated, under Section 63(c) and (e) of the *Civil Procedure Act* which states that as follows–

> In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed -
>
> a. .....;
>
> b. .....;
>
> c. grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
>
> d. .....;
>
> e. make such other interlocutory orders as may appear to the court to be just and convenient.

29. In light of the analysis I have made in paragraphs *25*, *26* and *27* of this ruling, I am not persuaded that the instant application offends the provisions of Order 2 Rule 6(1) of the Civil Procedure Rules, 2010

as the orders being sought in this application are properly anchored on the orders sought in the plaint dated 4th March 2024. As a result, it is my finding that the defendants' Preliminary Objection is not merited. It is hereby dismissed with costs to the plaintiffs.

Whether an order of injunction should issue against the defendants.

30. Temporary injunctions are provided for under Order 40 Rule 1 of the Civil Procedure Rules, 2010 which states 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.

31. An injunction is granted on the basis of evidence and sound legal principles since it is a discretionary remedy. The Court in the case of Giella v Cassman Brown & Co. Ltd (supra) laid down the principles to be considered by Courts when dealing with applications for temporary injunction as follows -

> The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.

32. The Court of Appeal in the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR, discussed what constitutes a prima facie case as hereunder –

> So, what is a prima facie case" I would say that in civil cases it 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 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. That is clearly a standard, which is higher than an arguable case.

33. The plaintiffs' case herein is that subsequent to the establishment of the 1st defendant by the 2nd & 3rd defendants, the 1st plaintiff was approached by the 2nd defendant to invest in the 1st defendant in exchange of shareholding in the 1st defendant company. The 1st plaintiff averred that it was agreed between him and the 2nd defendant via WhatsApp communication that upon investing in the 1st defendant which he did to the tune of Kshs.14,000,000/=, the 2nd defendant would transfer to him 60% of the 1st defendant's shareholding. The 1st plaintiff contended that the 2nd defendant has refused,

declined and/or ignored to execute the share transfer forms in his favour, despite repeated requests and/or demands.

34. The defendants on the other hand averred that the 1st plaintiff was never offered a 60% shareholding in the 1st defendant company. On their part, they contend that upon establishment of the 1st defendant company, they sought capital investments from multiple individuals, including the 1st plaintiff, who contributed funds as a loan, not as an investment for shares. They allege that no Agreement exists between the 2nd defendant and the 1st plaintiff regarding shareholding, as there was no offer, acceptance, consideration, or intention to form a legal contract. The foregoing notwithstanding, the defendants state that the Kshs.14,000,000/= advanced to the 1st defendant company by the 1st plaintiff was fully refunded to the 1st plaintiff by December 2023.

35. I note that while there was no express contract between the 1st plaintiff and the 2nd defendant for investment in exchange of shareholding in the 1st defendant company, there were discussions between the two regarding such an arrangement. WhatsApp communication shows that the 2nd defendant made a suggestion to the 1st plaintiff to view the equipment as part of the investment. The said message also contains discussions about the shareholding structure and transfer forms. In 2023, they discussed a proposed 60:40 shareholding split in favour of the 1st plaintiff. The 2nd defendant expressed willingness to proceed with the transfer but raised concerns about corporate governance and remuneration, which caused discomfort to the 1st plaintiff.

36. The issue as to whether or not there existed a contract implied or otherwise between the 1st plaintiff and the 2nd defendant, that allegedly led the 1st plaintiff to invest in the 1st defendant company in exchange of shareholding in the 1st defendant is an issue to be determined at the main hearing. At this juncture, I am only expected to determine at a prima facie level without going into the merits of the case, whether the plaintiffs have established a prima facie case. From the foregoing, I am satisfied that there was an understanding between the 1st plaintiff and the 2nd defendant that the 1st plaintiff would invest in the 1st defendant company in exchange of shareholding in the 1st defendant company. I however note that it is not disputed that the 1st plaintiff's investment of Kshs.14,000,000/= has been fully refunded to him, which payment was not rescinded.

37. The plaintiffs contended that if the orders being sought are not granted, the order for valuation of the 1st defendant company to determine the 1st plaintiff's value of his 60% shareholding will be rendered moot. In my considered view, an order for valuation of the 1st defendant company to determine the value of the 1st plaintiff's alleged 60% shareholding is not sufficient to warrant restraining the 2nd & 3rd defendants from selling, transferring, or dealing with the shares and assets of the 1st defendant, since this can be done even during the pendency of the suit between the parties herein.

38. I also note that the injunctive reliefs being sought by the plaintiffs are for restraining the 2nd & 3rd defendants from selling, transferring, or dealing with the shares and assets of the 1st defendant, and restraining the defendants from removing, selling, or interfering with specific gym equipment owned by the 1st defendant. In the main suit, the 1st plaintiff does not however seek an order to compel the Registrar of companies to transfer 60% shares of the 1st defendant to him, to warrant registration of a caveat by the said Registrar against the 1st defendant to stop any transaction in relation to its shareholding and/or restraining the defendants from dealing with the 1st defendant's shares and assets.

39. Further, since the 1st plaintiff was refunded his full investment capital, there is no justification for restraining the defendants from dealing with the 1st defendant's shares and assets and removing, selling, or interfering with specific gym equipment. Additionally, it is evident from the plaint in the suit that there are no substantive reliefs sought by the plaintiffs in respect to the gym equipment. In the end,

I am not persuaded that the plaintiffs have made out a prima facie case to warrant being granted the injunctive reliefs sought.

40. As to whether the plaintiffs stand to suffer irreparable injury and damage in the event that the injunctive reliefs sought herein are not granted, I am not persuaded that this is the case. This is because it is not disputed that the 1st plaintiff's investment of Kshs.14,000,000/= has been fully refunded to him and the value of the 1st defendants 60% shareholding can always be determined by way of valuation during the pendency of this suit upon application by either party. For this reason, I hold that any damage that the plaintiffs may suffer as a result of this application being disallowed can always be compensated by an award of damage damages.

41. In the circumstances, it is my finding that the balance of convenience tilts in favour of the defendants.

Whether the plaintiffs have made out a case to warrant issuance of freezing orders.

42. In Goode on Commercial Law 4th Edition at page 1287, cited by the Court in Junction Forex Bureau Limited v Rafigue [2023] KEELRC 599 (KLR), an applicant seeking a freezing injunction must satisfy the Court that -

    a. He has a good arguable case based on a pre-existing cause of action;

    b. The claim is one over which the court has jurisdiction;

    c. The Defendant appears to have assets within the jurisdiction;

    d. There is a real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted.

    e. There is a balance of convenience in favour of granting the injunction.

43. Earlier on in this ruling, I made a finding that the plaintiffs have not demonstrated that they have a prima facie case. It is not disputed that I have jurisdiction to hear and determine this suit and that the defendants have assets within the jurisdiction of this Court. The plaintiffs have however neither alleged nor demonstrated that there is a real risk that the monies in account No. 030283XXXX held at Diamond Trust Bank and registered in the name of the 1st defendant, which account they seek to freeze, will be removed from the jurisdiction of this Court or otherwise dissipated if a freezing order is not granted. In the premise, it is my finding that the balance of convenience does not tilt in favour of issuing the freezing orders sought.

44. In the end, I find that the plaintiffs have not made out a case to warrant this Court to exercise its discretion in their favour and issue the freezing order that has been sought.

Whether the 2nd defendant should be compelled to render a true and just account of all monies received from the plaintiffs for purposes of setting up the 1st defendant company.

45. Having found that the 1st defendant already refunded the 1st plaintiff Kshs.14,000,000/=, which the 1st plaintiff claims was advanced to the 2nd defendant for purposes of setting up the 1st defendant company, it is my finding that there is no need for an order for rendering of true and just accounts of the said monies.

46. I therefore find the plaintiffs' application dated 4th March 2024 to be devoid of merits. It is hereby dismissed with costs to the defendants. As earlier held, the costs of the unsuccessful Preliminary Objection filed by the defendants are awarded to the plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF FEBRUARY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Kitala for the plaintiffs/applicants

Mr. Onyancha for the defendants/respondents

Ms B. Wokabi – Court Assistant.