



REPUBLIC OF KENYA



KENYA LAW
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**Guanghai v Zhenhua & 2 others (Civil Case E279 of 2024)
[2025] KEHC 841 (KLR) (Civ) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E279 OF 2024

JN MULWA, J

FEBRUARY 3, 2025

BETWEEN

SHAO GUANGHUI PLAINTIFF

AND

GUO ZHENHUA 1ST DEFENDANT

SANA BROTHERS LTD 2ND DEFENDANT

REDFLAG ENTERPRISES 3RD DEFENDANT

RULING

1. By a Plaint dated 11/12/2024 the plaintiff sued the defendants herein jointly and severally seeking compensation for breach of contract from which it is stated the plaintiff suffered loss and damages, and continues to suffer substantial losses arising from bank facilities and interest thereon.
2. The plaintiff claims that at all material times the 1st defendant was and is the beneficial owner of the 2nd and 3rd defendants and carried (and still carries) out businesses of selling various merchandise within the republic to Kenya sourced from China in the names of the 2nd and 3rd defendants and the plaintiff and stored in their go-downs situated at ICD Road Nairobi.
3. By a three (3) years agreement entered into between the plaintiff and the 1st defendant acting on his behalf and that of the 2nd and 3rd defendants dated 10/08/2023, it was agreed that the parties would be selling through the 2nd and 3rd defendants then remit to the plaintiff the proceeds therefrom less expenses and agreed commission.
4. By an agreement of termination of the earlier agreement dated 10/08/2023, dated 28/03/2024, the parties agreed that the 1st defendant would immediately release to the plaintiff the unsold goods (machinery) and an inventory taken, and further to pay to the plaintiff a sum of Kshs. 14,949,040/=



5. The 1st defendant in breach of the agreement failed to release to the plaintiff the goods as per the inventory nor paid the above sum as agreed, which breach the plaintiff alleges to have caused him loss and damages and financial hardship in terms of bank interests.
6. The plaintiff therefore by the plaint aforestated seeks:
 - a. General damages for breach of contract
 - b. Special damages of Kshs. 7,365,480/=
 - c. Principal sum of Kshs. 14,738,040/=
 - d. Costs and interest.
7. By the instant application dated 15/01/2025, the plaintiff moved to court under provisions of Order 39 Rules 1 and 5, Order 40 Rule 1(b) of the Civil Procedure Rules (CPR) and Sections 1A, 1B and 3A of the Civil Procedure Act (CPA) seeking Orders:-
 1. Spent
 2. That the defendants jointly and severally do furnish security before judgment for the due performance of such decree as may be issued against them in the suit.
 3. That the court do issue a warrant of arrest against the 1st defendant to bring him before the court to show cause why he should not furnish security for his appearances before the court whenever he is required to appear on account of the suit until the suit is heard and determined.
 4. That the 1st Defendant/Respondent do surrender to this honorable Court his Chinese Passport Number EB5820638 for the court to hold in its custody to ensure his presence within Kenya until the suit is heard and determined.
 5. That the 1st Defendant/Respondent be restrained by Orders of this honorable court from leaving the local limits of the jurisdiction of the honorable court by leaving the country Kenya on the said Chinese passport number EB5820638 or on any other passport or travel document(s) as may be issued to him howsoever and whenever by the Chinese Government or by any other authority, pending the hearing and determination of the suit herein.
 6. That pending the hearing and determination of the suit the defendants/respondents, jointly and severally, do show cause within seven (7) days of service hereof or within such time as the court may deem fit to Order in the circumstances herein, why they should not furnish security is the sum of Kshs. 14,738,040/= and a further sum of Kshs. 7,365,480/= being the principal sum and special damages, respectively, claimed in the suit by the honourable court may deem fit to order as a deposit on the general damages interests and costs pleaded and prayed for in the suit.
 7. That until such time as the 1st defendant/respondent appears before the honourable court to show cause why the Defendant/Respondents should not furnish the security sought herein, this honourable court do forthwith attach the 1st defendant's/Respondent's rights and interests in his property of one (1) flat situated in the Riziki apartments on Hamisi Road in Kileleshwa, Nairobi, and any interests and rights that the defendants/respondent may jointly and severally have now or in the future within Kenya under any contract or business arrangement with any third party/parties with a value equivalent to the said principal sum of Kshs. 14,738,040/= the special damages of Kshs. 7,365,480/= and the deposit sought by the plaintiff/Applicant in the suit herein on general damages, interests and costs.



8. That this honourable court do issues such other/further order as it may deem fit and just to issue to serve the ends of justice in the circumstances of the suit herein.
9. That the costs of this application be borne by the defendants/respondents.
8. The plaintiff swore the Supporting Affidavit on 15/01/2025. The court has considered the grounds for the application stated at its face and the supporting affidavit as well as the claim as stated in the plaint, alongside the plaintiff's arguments by his advocate F. Mwangangi on 29/01/2025
9. There is on record and filed an affidavit of service of court process the plaintiff verifying affidavit, summons to enter appearance, hearing notice for the 29/01/2025 and court orders issued on 17/01/2025, the certificate of urgency and the notice of motion application dated 15/01/2025; sworn on 27/01/2025 by the process server one Barnabas Kisilu.

The court is therefore satisfied that the defendants were also duly served and failed to attend court for inter partes hearing of the application.

10. It is evident that the 1st defendant is a Chinese National and therefore a foreigner by dint of his Chinese Passport Number EB5820638 and is well known to the plaintiff and the other parties being business partners since 2003 and a Director in the 2nd and 3rd companies as the human face of the said companies.
11. The genesis of the dispute is already stated above as contained in the plaint and supporting affidavit. The Plaintiff avers that the 1st defendant has interests and rights in his property, flat situated in the Riziki Apartments on Hamisi Road in Kileleshwa, Nairobi with an estimated value of the principal sum of Kshs. 14 million, that should be attached should the 1st defendant fail to attend court to show cause why he should not furnish security for the judgment that may be issued against him in the suit.
12. Additionally, the plaintiff deposes that the 1st defendant is preparing to abscond or leave the local limits of the jurisdiction of this court, by leaving the country for purposes of obstructing or defeating the execution of any decree that may be issued in favour of the plaintiff.
13. To prove the above, the plaintiff avers that the 1st defendant has since closed the business premises/go-downs along ICD road, Nairobi where the parties carry on business and that he has secretly set to dispose of the Kileleshwa apartment to an unknown purchasers whose particulars he has hidden from the plaintiff and therefore evident that he is planning to leave the Kenyan Jurisdiction.
14. For the aforesaid, the plaintiff argues that the prayers sought ought to be granted.
15. Order 39 Rule 1 & 5 of the Civil Procedure Rules states:-
 1. Where at any stage of a suit, other than a suit of the nature referred to in paragraphs (a) to (d) of section 12 of the Act, the court is satisfied by affidavit of otherwise-
 - a. That the defendant with intend to delay the plaintiff, or to avoid any process of the court; or to obstruct or delay the execution of any decree that may be passed against him;-
 - i. Has absconded or left the local limits of the jurisdiction of the court; or
 - ii. Is about to abscond or leave the local limits of the jurisdiction of the court or
 - iii. Has disposed of or removed from the local limits of the jurisdiction of the court his property or any part thereof; or



- b. That the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before court to show cause why he should not furnish security for his appearance; provided the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim and such sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.

2.

- (1) where the defendant fails to show cause the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him in the suit.

16. The plaintiff/applicant invokes Order 40 Rule 1(b) of the CPR for an order of temporary injunction to restrain the defendant from alienating; selling, removal or disposition of any property is intended for disposal until the suit is determined or until further orders.

The above legal underpinnings grant the court power to grant the orders sought if satisfied that the applicant has demonstrated that in this case, that the 1st defendant is a foreigner and is planning or intends to leave Kenyan Jurisdiction.

17. The Court of Appeal in the case of Kuria Kanyoko t/a Amigos Bar and Restaurant vs. Francis Kinuthia Nderu, Hellen Njeru Nderu and Andrew Kinuthia Nderu [1988] 2KAL 1287-1334 set down the principles governing attachment before judgment under Order 40 Rule 5 Civil Procedure Rules thus:-

The defendant is about to dispose of his property or leave the jurisdiction of the court.

See also for the same holding (CoA) decision in FTG Holland V. Afapack Enterprises Limited & Another [2016] eKLR Awo Shariff Mohammed t/a Asmi Services Station v. Caltex Oil Kenya Ltd [2008] eKLR Godfrey Oduor Odhiambo v. Ukwala Supermarket Kisumu Ltd [2010] eKLR and Feudenthal & Another ; Philip & Another (interested parties) [2024] KEELC 3848(KLR) among many others.

18. In the Kanyoko t/a Amigos Bar & Restaurant(supra) the Court of Appeal rendered that the power under Order 39 Rule 5 ought only to be exercised once the court is satisfied that the conditions it set are complied with; upon clear proof that the defendant was about to delay execution of any decree that may be passed against him

19. On the order for Interlocutory Judgment, under Order 40 CPR, it is evident that the plaintiff and the 1st defendant had contractual relations that is deducible from the two agreements between the parties. In terms of the holding in Nguruman Limited V. Jan Bonde Nielsen & 2 Others [2017];

If a prima facie is not established, then irreparable injury and balance of convenience need no consideration.

20. The 1st defendant is caught up under Order 39 Rule 5 & 2 Civil Procedure Rule as it is clear that he is about to dispose of the only known property and intent to obstruct or delay the execution of any decree that may be issued against him. He has closed the business premises. He is a Chinese National and may be planning to leave Kenyan Jurisdiction.



21. In light of the above, the applicant/plaintiff has shown by uncontroverted affidavit evidence that the 1st defendant has shown that he intends to obstruct the execution of the decree that may be issued against him by closing the business premises where the Parties including the plaintiff have been carrying on their businesses at ICD Road, Nairobi and is planning to dispose of the Kileleshwa apartment, and then abscond and leave the Kenyan jurisdiction.
22. In the court's view, all these are overt actions that show the 1st defendant's intent to obstruct or delay execution or any decree that may be passed against him.

The only known property owned or in which the 1st defendant has interest in is the Kileleshwa Apartments and there are plans in place for its disposal to unknown parties. See the case of Sakura Limited vs. Paks Mumtaz Motors Limited & 2 Others, [2022] eKLR. The 1st defendants actions are quite purposeful and intentional to obstruct and defeat execution of the decree should the suit be heard and determined in favour of the applicant.

23. For the foregoing, the court is satisfied that the plaintiff's application dated 11/12/2024 is merited. It is granted, but limited to prayer Numbers 2, 3, 4, 5 and 6 - (in the sum of Kshs. 22,103,520/=); and 7 as stated in the application.

Cost of the application shall be in the cause.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 3RD DAY OF FEBRUARY 2025.

JANET MULWA

JUDGE

