



**Rabe t/a Safari Plaza Limited v Total Kenya Limited (Miscellaneous Application E845 of 2024) [2025] KEHC 1528 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1528 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E845 OF 2024**

**PM MULWA, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**MOHAMED RABE T/A SAFARI PLAZA LIMITED ..... APPLICANT**

**AND**

**TOTAL KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The ruling concerns the Notice of Motion dated 15<sup>th</sup> October 2024, brought under Section 7 of the *Arbitration Act* in which the Applicant seeks interim orders of protection pending arbitration. These include maintaining the Applicant's status as a licensee of the South B and South C Total Energies Service Stations, barring eviction without due process, issuing a temporary injunction against eviction notices dated 11<sup>th</sup> October 2024, suspending the eviction notices pending arbitration and costs of the application.
2. The application is premised on the grounds on the face of it and supported by the affidavit of Mohamed Rabe sworn on 15<sup>th</sup> October 2024. The Applicant asserts that it entered into Marketing License Agreements for the South B and South C Total Energies Service Stations which lapsed, by effluxion of time. However, it has since received a termination notice and threats of eviction. The Applicant further contends that, despite the expiration of the contract, the Respondent failed to renew it, citing unresolved compensation claims by the Applicant.
3. The Arbitral Award issued on 12<sup>th</sup> September 2023 was set aside on 1<sup>st</sup> July 2024, with a directive for a fresh arbitration. It is contended that the Respondent has obstructed and hindered the process of appointing a new arbitrator. As a result, the Applicant now seeks the assistance of this court to prevent the Respondent from forcibly evicting it from the business, arguing that it will suffer irreparable damage if such orders are not granted, pending the completion of the arbitration process.



4. In response, the Respondent filed a Replying Affidavit sworn on 29th October 2024 by Soila Kigera, the Legal Officer of the Respondent. The Respondent asserts that the Marketing License Agreements for the South B and South C Total Energies Service Stations lapsed in 2019 and 2017, respectively. The Respondent further contends that the Applicant's claims for losses cannot serve as a legitimate basis for the continued occupation of the stations.
5. The Respondent denies issuing eviction notices to the Applicant, clarifying that what was issued were handover notices, which are distinct from eviction notices. The Respondent emphasizes that the Applicant's continued occupation of the premises, despite the expiration of the contracts, is without legal basis.
6. I have considered the application, the affidavits both in support and in opposition to the same and the submissions of counsel.
7. The matter before me is brought under Section 7 of the *Arbitration Act*, which allows the High Court to grant interim measures of protection before or during arbitration. The section provides as hereunder:

“It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.”
8. The Court must first determine whether there exists an arbitration agreement and whether the subject matter of arbitration is under threat, as these are prerequisites for granting interim relief.
9. In this case, it is undisputed that an arbitration clause existed within the Marketing License Agreements. The matter was previously referred to arbitration, and although the arbitral award was set aside, the existence of the arbitration agreement is clear.
10. The next issue is whether the subject matter of arbitration, which is the Applicant's continued operation of the service stations, is under threat. The Applicant asserts that it has been served with termination notices and is at risk of eviction. The Respondent contends that the agreements lapsed in 2017 and the Applicant is occupying the stations without a valid contract.
11. The courts in Kenya have recognized that where there is a legitimate threat to the subject matter of arbitration, interim measures may be granted to preserve the status quo pending the arbitration process.
12. In the case of *Seven Twenty Investments Limited v Sandhoe Investment Kenya Limited (2013) eKLR*, Kamau, J. held as follows:

“A perusal of section 7 of the *Arbitration Act* clearly shows that the issue of whether or not there is a dispute or whether or not there would be losses by either side would not be a factor for a court to take into consideration when deciding whether or not it should grant an order of interim measure of protection or injunction to safeguard the subject matter of the arbitral proceedings. All that a court would be interested in is whether or not there was a valid arbitration agreement and if indeed the subject matter of the arbitral proceedings was in danger of being wasted or dissipated so as to preserve the same pending the hearing and determination of the arbitral reference.”



13. The Applicant argues that eviction would cause irreparable harm and render the arbitration proceedings nugatory, as long as the Respondent continues to obstruct business operations. The Applicant claims that without the Court's intervention, the ongoing arbitration will be futile.
14. However, the law is clear that once a contract expires, the rights and obligations under that contract cease, and the continued occupation of the premises by the Applicant is unlawful. The Applicant's failure to renew the agreements means it has no entitlement to remain on the property, and the Respondent is within its rights to reclaim possession.
15. The Applicant has not demonstrated that its occupation is under any genuine threat. The Respondent is simply exercising its right to reclaim possession of the property upon the expiration of the contract. As the law stands, the Applicant has no legal right to continue occupying the premises.
16. Section 7 of the *Arbitration Act* permits interim relief only in cases where there is a real threat to the subject matter of arbitration. Here, the Applicant has not shown that eviction would impede the arbitration proceedings or cause irreparable harm. The issues raised, including product shortages and faulty pumps, are monetary claims that can be addressed in arbitration but do not justify the Applicant's continued occupation of the premises.
17. In light of the foregoing, the Applicant has failed to meet the conditions outlined in *Giella v. Cassman Brown & Co. Ltd* (1973) E.A. 358 for the grant of interim relief, as no prima facie case or irreparable harm has been established. The Applicant's continued occupation of the premises is unlawful, and the Respondent is entitled to reclaim possession.
18. Consequently, the Notice of Motion dated 15<sup>th</sup> October 2024 is without merit and the same is dismissed with costs.
19. I had reserved my decision on the issue of contempt to be addressed in this ruling. Having found that the Applicant's continued occupation of the premises is illegal, the contempt issue is rendered moot. Any finding on the same would not alter the conclusions reached regarding the Applicant's unlawful occupation.

**RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Olwanya h/b for Mr. Bashir for Applicant

Mr. Abdullahi h/b for Mr. Munyalo for Respondent

Court Assistant: Carlos

