



REPUBLIC OF KENYA



**Vibhuti Hardware Limited v Accurate Steel Mills Limited (Civil Case E127 of 2024)
[2025] KEHC 4975 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E127 OF 2024**

PM MULWA, J

APRIL 24, 2025

BETWEEN

VIBHUTI HARDWARE LIMITED PLAINTIFF

AND

ACCURATE STEEL MILLS LIMITED DEFENDANT

RULING

1. Before the court for determination is the Notice of Motion dated 2nd May 2024 brought under Order 39 Rules 1, 2 and 5, Order 40 Rule 1 of the [Civil Procedure Rules](#) 2010, Sections 1A and 3A of the [civil Procedure Act](#). In the motion the Defendant is seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the suit, an order be and is hereby issued prohibiting the Plaintiff and/or their agents or representatives from withdrawing, transferring out, utilizing, or dealing in any manner that would lead to a withdrawal of funds in respect of the accounts held in the following accounts namely: Account No. XXXXXXXXXXXX and Account No. XXXXXXXXXXXX, both held at KCB Bank Jogoo Road Branch, and Account No. XXXXXXXXXXXX held at ABSA Bank Limited.
 - d. In the alternative, this court, and without prejudice, do order the Defendant to pay the Plaintiff the undisputed/admitted claim of Kshs 248,506,082.97 from the held banks, or pay into a joint interest-earning account of the parties' advocates the sum of Kshs 299,334,285.10 in respect of the balance of the sums claimed by the Defendant against the Plaintiff.
 - e. Any other relief that the court deems fit in the interest of justice.



- f. That the costs of the application be provided.
2. The application is premised on the grounds on the face of it and supported by the affidavit of Gurveer Bhachu, who contends that the Plaintiff filed the plaint dated 14th March 2024, admitting indebtedness to the Defendant in the sum of Kshs. 248,506,082. However, the Defendant asserts the actual debt stands at Kshs. 547,840,368.07. It is contended that the Plaintiff has been dissipating its assets, including bank-held monies, with the intention of frustrating any decree that may be issued by this Court. Further, despite an alleged admission of indebtedness and a proposal to settle the same in instalments, no payment has been made to date. The Defendant expresses apprehension that unless this Court intervenes, the Plaintiff may dispose of or conceal assets, thus rendering any eventual judgment illusory and incapable of enforcement.
 3. The application is opposed through a replying affidavit sworn on 18th July 2024 by Nikesh Popatlal Shah, a Director of the Plaintiff. He contends that the application is incompetent, brought in bad faith, and aimed at prematurely obtaining judgment on a disputed claim. The Plaintiff maintains that while it admitted to owing the lesser sum, it proposed to settle it in instalments, and that freezing its operational accounts would paralyze business operations. It is further stated that the Plaintiff has not engaged in any dissipation of assets but continues to make genuine withdrawals necessary for business continuity. The Plaintiff denies any intention of absconding or relocating its business and avers that payments toward the debt have been made.
 4. The parties were directed to canvass the application by way of written submissions. The Defendant complied and filed submissions dated 12th July 2024. The Plaintiff, despite being granted time, did not file any.
 5. I have carefully considered the pleadings, affidavits and submissions on record. The central issue for determination is whether the Defendant has satisfied the threshold for the grant of a freezing order, alternatively, whether the Plaintiff ought to be compelled to deposit the claimed or admitted sum.
 6. A freezing order is a stringent equitable remedy issued in personam. Its primary purpose is to prevent the dissipation of assets that may frustrate or render nugatory the enforcement of a potential judgment. It is not intended to operate as an instrument of pressure, nor does it confer proprietary rights in the Defendant's assets upon the Plaintiff (as held in *International Air Transport Association & Another v Akarim Agencies Company Limited & 2 Others* [2014] eKLR).
 7. The principles governing the grant of a freezing order are distinct from those applicable to ordinary injunctive relief. However, the underlying standard of proof is akin to that set out in *Giella v Cassman Brown & Co. Ltd* [1973] E.A. 358. The applicant must demonstrate a prima facie case with a probability of success, and in addition, satisfy the specific conditions applicable to freezing injunctions. These include showing that:
 - a. There is a good arguable case;
 - b. The respondent has assets within the jurisdiction;
 - c. There is a real risk of dissipation or concealment of those assets; and
 - d. The balance of convenience tilts in favour of granting the order.
 8. The Court retains a wide discretion and must be guided by the interest of justice, particularly in preserving the subject matter of the suit while avoiding undue prejudice to either party.



9. In the present case, the Plaintiff has unequivocally admitted its indebtedness in the sum of Kshs. 248,506,082.97. Such an express admission, unaccompanied by any payment satisfies the requirement of a prima facie case for the purposes of interlocutory relief. As the Court observed in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, a prima facie case is not one that must succeed at trial, but one which discloses such material as raises serious questions meriting judicial intervention.
10. The Court's jurisdiction is not contested. The accounts sought to be restrained are domiciled within the jurisdiction and are held at local financial institutions. The Defendant contends that the Plaintiff is actively dissipating assets to frustrate any eventual execution. However, no specific or cogent evidence has been adduced to substantiate these claims. The allegations remain speculative. Conversely, the Plaintiff maintains that all withdrawals are related to ordinary business operations and denies any intent to relocate or cease business.
11. It is trite that a freezing order, being a drastic and extraordinary remedy, can only be granted where there is compelling, consistent, and substantiated evidence of a real risk of asset dissipation or absconding with intent to defeat the ends of justice. Mere apprehension or generalized suspicion does not meet the threshold.
12. Upon evaluating the material placed before the Court, I find no evidence, beyond mere assertion, to suggest that the Plaintiff is either dissipating assets or is about to abscond. The Defendant has failed to meet the threshold required for the grant of a freezing injunction.
13. Moreover, the restraint of the Plaintiff's operational accounts would have the inevitable effect of paralyzing its business, which could in turn defeat the very substratum of the suit.
14. The Court is enjoined to balance the competing interests of the parties and to preserve the subject matter of the suit. In that regard, the alternative prayer seeking an order that the admitted or claimed amount be deposited in a joint interest-earning account appears to provide a suitable middle ground. It preserves the Defendant's right to recovery while safeguarding the Plaintiff's business operations from undue disruption.
15. Given the Plaintiff's clear admission of indebtedness and the failure to honour proposed instalments, there exists a legitimate concern regarding the preservation of the admitted sum.
16. In the interest of justice and to safeguard the rights of both parties, I order that the Plaintiff deposit the sum of Kshs. 248,506,082.97 into a joint interest-earning account in the names of the advocates for the parties within thirty (30) days of the date of this ruling, pending the hearing and final determination of the main suit.
17. The issue of the disputed balance of Kshs. 299,334,285.10 remains a matter for trial.
18. For the avoidance of doubt I find that the Defendant has not met the threshold for a freezing order. As held in the Mrao case (supra), suspicion without substantive evidence is legally insufficient.
19. The costs of this application shall abide by the outcome of the main suit.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:



Mr. Ngige for Plaintiff

Mr. Andiwo for Defendant

Court Assistant: Carlos

