



**Rosper International Limited & another v Waweru & another (Civil Case E605 of 2024)
[2025] KEHC 6743 (KLR) (Commercial and Tax) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E605 OF 2024**

PM MULWA, J

MAY 22, 2025

BETWEEN

ROSPER INTERNATIONAL LIMITED 1ST PLAINTIFF

PROSPER SUGAI 2ND PLAINTIFF

AND

DANIEL MURIITHI WAWERU 1ST DEFENDANT

DANIEL OUTLETS LIMITED 2ND DEFENDANT

RULING

1. This ruling relates to the Notice of Motion dated 7th October 2024, brought under the provisions of Order 40 rules 1, 2 and 3, Order 23 rule 1 of the Civil Procedure Rules and Sections 1A and 3A of the *Civil Procedure Act*, as well as Article 159(2)(d) of *the Constitution* of Kenya. The Plaintiffs/Applicants seek, inter alia, the following substantive orders:
 - i. spent
 - ii. spent
 - iii. That this Court be pleased to issue a temporary injunction against the defendants/respondents from carrying out debit transactions of moving out funds from accounts at Sidian Bank Limited, Kilimani Branch A/C No. 010360xxxx3580 (USD) and A/C No. 010360xxxx2932 (Kshs), Bank of Baroda Kenya Limited Industrial Area Branch A/C No. 958702xxxx1367; Credit Bank PLC One Africa Westlands Branch A/C No. 01910xxxx0087; Cooperative Bank of Kenya University Way Branch A/C No. 011091xxxx3200 (Kshs) and A/C No. 021001xxxx3200 (USD) pending the hearing and determination of this suit.



- iv. That this Honourable Court be pleased to issue an order forthwith to freeze the defendants accounts [as mentioned in (iii) above] stopping any further drawings, withdrawals and/or debit transactions pending further orders and directions of the Court.
 - v. That Sidian Bank Kilimani Branch, Bank of Baroda Kenya Limited Industrial Area Branch, Credit Bank PLC One Africa Westlands Branch and Cooperative Bank of Kenya University Way Branch be served with the order of this Court and ensure enforcement until further directions of the Court.
 - vi. The costs of the application be provided for.
2. The application is supported by the affidavit of Prosper Sugai (2nd Applicant) sworn on 7th October 2024 and supplementary affidavit sworn on 19th October 2024. In the said affidavits, the deponent avers that the Applicants, upon request by the Respondents, financed a tender awarded by New Kenya Cooperative Creameries Limited (New KCC) for the purchase of Automatic Milk Powder Packaging line (the Machine) at a cost of USD 1,413,832. The Applicants allege that despite the Respondents having been paid for the tender by the New KCC, they have refused/neglected to pay the money used to procure and supply the machine as per the parties' memorandum of understanding (MoU).
 3. The gist of the application is that the Respondents are in clear breach of a MoU and oral agreement and their refusal to pay the owed amount is illegal, unconstitutional, arbitrary and oppressive. That the 1st Respondent being the sole director of the 2nd Respondent is the one who executed the MoU on behalf of the 2nd Respondent.
 4. The application is opposed. The Respondents filed a Notice of Preliminary Objection dated 14th October 2024 and a Replying Affidavit sworn by Daniel Muriithi Waweru (1st Respondent) on 15th October 2024. It is averred that this Court lacks the jurisdiction to hear and determine the matter by virtue of section 6(1) of the Arbitration Act. That the MoU had a clause ousting the jurisdiction of the Court.
 5. The Respondents further assert that it is the 2nd Respondent and the 1st Plaintiff who entered into the MoU dated 24th December 2020 and deny that the 1st Applicant had paid USD 1,413,832 as alleged. And that the Applicants are not privy to the contract between the New KCC and the 2nd Respondent and therefore any dealings thereof including payment or non-payment should not be the subject of these proceedings.
 6. According to the 1st Respondent, he and the 2nd Respondent are separate legal entities and there would be no legal justification for injuncting his personal bank accounts.
 7. On 20th January 2025 when the matter came up for directions, the Respondents, through their Advocate abandoned the Notice of Preliminary Objection and the Court proceeded to hear the application through written submissions, which both parties filed.
 8. Having carefully considered the pleadings, affidavits and rival submissions of the parties, the only issue that fall for determination is: whether the Plaintiffs/Applicants have met the threshold for the grant of temporary injunctive relief and freezing of the Defendants accounts.



9. The principles of injunctions are as enunciated in the case of *Giella v Cassman Brown* (1973) EA 358 and as was reiterated in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [CA No.77 of 2012](#) (2014) eKLR where the Court of Appeal held that:
- “In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establishes his case only at a prima facie level, (b) demonstrates irreparable injury if a temporary injunction is not granted and (c) allay any doubts as to b, by showing that the balance of convenience is in his favour.”
10. The three conditions are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.
11. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court defined a prima facie case as:
- “...a case in which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
12. In the present case, the Applicants have demonstrated that through a MoU they did finance a tender awarded by the New KCC to the Respondents. And that a debt has accrued as the Respondents have not paid the Applicants the amount deployed to finance and procure the Milk Machine, though the exact amount is disputed. These facts establish an arguable case meriting trial.
13. On the second limb, the Applicant must show that it stands to suffer irreparable harm, which was described in *Nguruman* (supra) as harm that cannot be adequately compensated by damages. From the material before this Court, both the Applicants and Respondents are in active and operational businesses. A decision either way would be in monetary terms and damages would suffice. The Applicants argue that the Respondents have been paid for the Milk Machine by the New KCC and the money deposited in the stated accounts and are apprehensive the same would be withdrawn and utilized for purposes other than settling the expected decree.
14. The test for the granting of a *mareva* injunction order was set out in the case of *DCF Engineering Limited v Johari Limited & Another* (2013) eKLR thus:
- “The grant of a freezing injunction is governed by principles quite distinct from those laid down for ordinary interim injunctions. Before granting a freezing injunction the Court will usually require to be satisfied that:
- a. The Claimant has a good arguable case based on a pre-existing cause of action;
 - b. The claim is 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; and
 - e. There is a balance of convenience in favour of granting the injunction.
15. In my view the Applicants have not proved that the Respondents have no property within the Court jurisdiction or intents to abscond from the Court’s jurisdiction.



16. Regarding the balance of convenience, I am persuaded that it lies in favour of the Respondents. If the 2nd Respondents accounts were to be frozen, the business operations will be crippled and that may lead to loss of jobs and inability to pay any decretal amount. Preserving the operational existence of the 2nd Respondent pending trial ensures that justice can be meaningfully dispensed.
17. In light of the foregoing and the discretion granted to this Court under Order 40 of the Civil Procedure Rules, I find that the Applicants have not met the threshold for the grant of interlocutory injunctive relief. The Notice of Motion application dated 7th October 2024 is dismissed with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mwangi for Plaintiffs/applicants

Mr. Dadu h/b for Mr. Gitau for Defendants/respondents

Court Assistant: Carlos

