



Scania Credit Solutions Proprietary Limited v Crown Bus Services Limited (Civil Miscellaneous E710 of 2024) [2025] KEHC 12209 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL MISCELLANEOUS E710 OF 2024**

TW CHERERE, J

MAY 22, 2025

BETWEEN

SCANIA CREDIT SOLUTIONS PROPRIETARY LIMITED APPLICANT

AND

CROWN BUS SERVICES LIMITED RESPONDENT

RULING

“Justice cannot thrive in a vacuum; it must be invoked through proper procedure, grounded in law, and pursued within the boundaries set by due process.”

1. The matter before this Court is the Amended Notice of Motion dated 16th September 2024, in which the Appellants seek, inter alia, orders that the motor vehicles bearing registration numbers KCX 074G, KCX 075G, KCX 076G, and KCX 077G be placed in the Applicants’ custody or in a neutral location under the direction and custody of this Honourable Court, pending the hearing and determination of the appeal in HCCA E849 of 2024.
2. The Application was opposed by the Respondent through Grounds of Opposition dated 11th September 2024 and submissions dated 21st January 2025, wherein the Respondent questioned the competence of the Application on the basis that it is not anchored on a valid suit or a proper appeal capable of sustaining the reliefs sought.

Issues for determination

3. From the affidavits in support of the application, the grounds of opposition and submissions by the Respondent, I have deduced the following issues arise for determination:
 1. Whether the Amended Application dated 16th September 2024 is competent in law
 2. Whether the Application can lawfully sustain a mandatory injunction



1. Whether the application is competent in law

4. The jurisdiction of this Court to entertain an application for interim relief is governed by Order 40 Rule 1 of the Civil Procedure Rules, 2010, which provides:

“Where in any suit it is proved by affidavit or otherwise...the court may by order grant a temporary injunction to restrain such act.”

5. The word "suit" is defined in Section 2 of the [Civil Procedure Act](#) (Cap 21, Laws of Kenya) as:

“...all civil proceedings commenced in any manner prescribed.”

6. It is trite law that an interlocutory application seeking injunctive relief must be grounded in a substantive suit or appeal. The courts have consistently held that the injunctive powers under Order 40 cannot be invoked in a legal vacuum.

7. In *Proto Energy Limited v Hashi Energy Limited* [2020] eKLR, the Court clearly stated:

“An application for an interlocutory injunction must be anchored on a substantive suit. The [Civil Procedure Act](#) and the Rules made thereunder do not envisage the grant of interlocutory orders in a vacuum.”

8. Similarly, in *Geoffrey Ndungu Theuri v Law Society of Kenya* [2022] eKLR, the Court held:

“The order specifically refers to a suit which is defined under Section 2 of the [Civil Procedure Act](#). The application must therefore be anchored in a substantive suit. There is no suit before the court, and the application is a nullity ab initio.”

9. In the present case, whereas the Applicant purports to anchor the application in HCCA E849 of 2024, the record shows that the initial Notice of Motion dated 25th July 2024, under which interim stay was first granted, was withdrawn by the Applicant vide a Notice dated 30th September 2024, with the withdrawal being effected on 29th October 2024. The current application, dated 31st July 2024 and amended on 16th September 2024, is thus disjointed from the primary appeal or suit and appears to stand on its own, unsupported by any extant substantive proceeding.

10. As was held in *Chacha & Another v Orbit Chemicals Industries Ltd & Another* [2024] KEELC 3278, and which is directly applicable to the present context:

“Order 40 rule 1 of the Civil Procedure Rules provides for the grant of temporary injunctions where there is a pending suit. An application filed independently without an underlying suit cannot attract interim relief.”

11. The principle was further underscored in *Wanja & Another v Roothaert* [2022] KEHC 10255, where the Court held:

“In this matter, the applicant did not anchor her notice of motion in a suit. This renders the motion fatally defective.”

12. Based on these binding authorities, it is clear that the present application, being disjointed from a competent appeal or suit, is fatally defective.



2. Whether the Application can lawfully sustain a mandatory injunction

13. The Applicant additionally seeks an affirmative mandatory order directing the placement of the subject motor vehicles into the Applicant's custody or at a neutral yard. Such an order amounts to a mandatory injunction, which is treated with judicial caution, particularly at the interlocutory stage.
14. In *Kenya Breweries Limited v Washington O. Okeyo* [2002] 1 EA 109, the Court of Appeal held:

“A mandatory injunction ought not to be granted on an interlocutory application unless in the clearest of cases and where the court is satisfied that the matter ought to be determined at once.”
15. The threshold for the grant of a mandatory injunction at the interlocutory stage is significantly higher than that for a prohibitory injunction, as it requires the court to compel a party to take an affirmative action, often before the full merits of the case have been canvassed.
16. Courts have consistently held that such relief should only be granted in exceptional and clear-cut cases, where the facts are undisputed and the applicant's right to the order is plain.
17. In the present case, the Applicants seek to interfere with the current state of possession of the motor vehicles, notwithstanding that the ruling delivered on 25th July 2024 which directed the return of the vehicles to the Respondentis also the subject of HCCA E849 of 2024.
18. In *Republic v Commissioner of Domestic Taxes* [2027] eKLR, the Court cautioned:

“A party ought not to be allowed to have a double-pronged attack before two or more jurisdictions. The court must guard its process against manipulation.”
19. Similarly, in *Goldfield Insurance v Commissioner of Insurance* [2022] KEHC 16802, the Court held:

“Therefore, it would be an abuse of the court process for a party to invoke two jurisdictions simultaneously for the same relief. It creates procedural confusion and frustrates the administration of justice.”
20. Consequently, the approach adopted by the Applicant amounts to an attempt to obtain, through collateral interlocutory motions, what ought to be pursued directly within the appellate process. The court cannot countenance such procedural circumvention, which undermines the orderly administration of justice and disregards the structure of appellate adjudication envisioned by the [Civil Procedure Act](#) and the Rules made thereunder.

Disposition

21. From the foregoing analysis, I find that:
 1. The Amended Notice of Motion dated 16th September 2024 is hereby struck out for being incompetent, having not been anchored on any valid or subsisting suit or appeal, contrary to the provisions of Section 2 of the [Civil Procedure Act](#) and Order 40 Rule 1 of the Civil Procedure Rules, 2010.
 2. Even on the merits, the relief for mandatory injunction, does not meet the requisite legal threshold and it is declined
 3. Applicant shall bear the Respondent's costs of this application



4. This being a miscellaneous file, it is closed.

DELIVERED AT NAIROBI THIS 22ND DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Applicant - Ms.. Oseko for G.N.Nyakundi Advocates

For Respondent - Mr. Kinyanjui for J. Harrison Kinyanjui & Co. Advocates

