



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Green Planet Initiative 2050 Foundation v Earthbanc AB & 3 others (Commercial Case E004 of 2025) [2025] KEHC 8185 (KLR) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
COMMERCIAL CASE E004 OF 2025
RN NYAKUNDI, J
JUNE 13, 2025**

BETWEEN

GREEN PLANET INITIATIVE 2050 FOUNDATION APPLICANT

AND

EARTHBANC AB 1ST DEFENDANT

EARTHTREE COMPANY LIMITED 2ND DEFENDANT

KHANNA RISHABH 3RD DEFENDANT

JOSEPH KARANJA MURATHI KINUTHIA 4TH DEFENDANT

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 21st May 2025 in which the Applicant is seeking the following orders:
 - a. Spent
 - b. Pending the hearing and determination of this suit, an interim injunction be issued restraining the 2nd Defendant, its agents or assigns, from presenting itself as the project implementer under the Regeneration of Kenya Project.
 - c. The Defendants be restrained from accessing, managing or representing the project assets, goodwill, donor funds or contractual benefits formerly assigned to the Plaintiff.
 - d. Pending the hearing and determination of this Application, this Honourable Court be pleased to issue a preservation order restraining the 1st and 2nd Respondents, their agents, servants, employees or any other person acting on their behalf from withdrawing, transferring, expending or in any way dealing with the donor funds received or in their custody without the leave of this Honourable Court.



- e. Pending the hearing and determination of this application, this Honourable Court be pleased to order the 1st and 2nd Respondents to deposit all donor funds in dispute into an escrow account to be jointly managed by the advocates for the parties or such other neutral custodian as the court may deem fit.
 - f. This Honourable Court be pleased to issue an interim injunction and/or conservatory orders restraining the Defendants conducting any actions that would result in the alienation or depletion of the disputed funds pending the hearing and determination of the petition.
 - g. The costs of this Application be provided for
2. The Application is supported by the grounds on the face of it among others:
 - a. The Plaintiff was the exclusive implementing partner under binding MOU's with four county governments and an SLA with the 1st Defendant.
 - b. The 2nd Defendant was never party to any MOU and was unlawfully inserted into the project operations.
 - c. The Defendants misappropriated donor funds by diverting disbursements to the 2nd Defendant through a bank account not authorized under the joint arrangement sanctioned by the NGO Coordination Board.
 - d. The 2nd Defendant has taken over the Plaintiff's employees through threats of constructive dismissal, evidenced by the issuance of Notices to Show Cause and recruitment drives targeting the Plaintiff's project team.
 - e. Unless restrained, the Defendants will continue to unlawfully benefit from the Plaintiff's groundwork and donor relationships, causing irreparable harm.
 3. The Application is supported by the annexed affidavit dated 21st May 2025 sworn by Festus Kiplagat, the Founder and Chief Executive Officer of the Plaintiff who avers as follows;
 - a. The Plaintiff entered into a Memorandum of Understanding dated 22nd August 2022 with Worldview Impact Limited for the Regeneration Kenya Project in 4 countries worth Kshs. 20 Billion (MOU) and a subsequent Service Level Agreement dated 12th December 2023 (SLA) with the 1st Defendant, wherein the Plaintiff was designated as the exclusive local implementing partner for the Regeneration Kenya Project.
 - b. At all material times, the Plaintiff was engaged by the 1st Defendant as its local implementing partner for the Regeneration Kenya Project (RKP), pursuant to the SLA. Under the said agreement, the Plaintiff was tasked with conducting due diligence, identifying viable project sites, liaising with local communities, overseeing afforestation activities and ensuring compliance with relevant environmental and carbon offset protocols.
 - c. Pursuant to the aforementioned mandate, Plaintiff mobilized community groups verified and mapped over 5,000 households and a total of 72,000 hectares of land for reforestation across four (4) counties and submitted detailed documentation including landowner consent forms, land coordinates, and forestry implementation plans for approval by the 1st Defendant and its designated validation entities. These efforts were undertaken with full knowledge and active participation of the 1st and 3rd Defendants.



- d. In the course of the performance, it consistently submitted reports, community data, land verification records and other project sensitive materials to the 1st Defendant and its officials, including the 3rd Defendant in good faith and with the expectation of continued collaboration in line with the building contractual relationship.
- e. However, on 7th December 2023, the 1st and 3rd Defendants, in breach of the contractual and fiduciary obligations owed to the Defendant, fraudulently incorporated the 2nd Defendant and commenced covert operations aimed at duplicating the Defendant’s work and reassigning the Defendant’s validated project site to the 2nd Defendant, without lawful termination of the existing agreement or consent of the Defendant.
- f. The plaintiff avers that the 4th Defendant acting under the instructions of the 3rd Defendant and purporting to represent the 2nd Defendant made multiple misrepresentations to community leaders, county officials and other stakeholders falsely alleging that the 2nd Defendant was the rightful project implementer and solicited access to the Plaintiff’s project documents, maps and landowner contacts under false pretenses.
- g. The independent of the national level agreements with the 1st Defendant, the Plaintiff executed separate Memoranda of Understanding with each of the four county governments within which the Regeneration Kenya Project was to be implemented. These county level MoU’s entered into solely between the Plaintiff and the respective county authorities affirmed that the Plaintiff’s exclusive mandate to engage with communities, manage implementation logistics, and coordinate field operations at the local level. At no point was the 2nd Defendant a party to any of these county-level MoU’s.
- h. That prior to the disputes herein, the Plaintiff maintained project-related bank accounts with Diamond Trust Bank for purposes of transacting donor funds. However, in the interest of enhancing transparency and complying with donor and NGO regulations, the Plaintiff and the 1st Defendant jointly sought and obtained the authority of the NGO Coordination Board to open a designated project account. The said account was to be operated jointly by representatives of the Plaintiff and The 1st Defendant with four authorized signatories two from each party.
- i. That during the financial years 2022 and 2023, the operational and financial relationship between the Plaintiff and the 1st Defendant remained stable, and The Plaintiff regularly received donor disbursements through the said channels, enabling uninterrupted implementation of the Regeneration Kenya Project.
- j. However, beginning in the Financial year 2024-2025, shortly after the incorporation of the 2nd Defendant, operational anomalies emerged, including unexplained diversions of donor funds. Without a lawful basis or amendment of the Service Level Agreement, the 2nd Defendant began receiving donor disbursements that had previously been remitted directly to the Plaintiff, effectively displacing the Plaintiff from its financial and operational roles under the project.
- k. The Plaintiff further states the 2nd Defendant not only assumed financial control but also systematically took over the Plaintiff’s field operations, project infrastructure and human resources including directly approaching and recruiting the Plaintiff’s employees.
- l. That the Plaintiff was alerted to the malicious nature of the 2nd Defendant’s actions when it emerged that several employees of the Plaintiff had been served with “Notices to Show Cause” by the 2nd Defendant despite having no employment relationship with it. these letters were



accompanied by inducements to resign or accept redeployment under the 2nd Defendant's structure, thereby affecting constructive dismissal of key personnel.

- m. As a direct consequence of the Defendant's unlawful conduct, the Plaintiff was unjustly deprived of its role as implementing partner and excluded from the subsequent implementation phases of the reforestation project, thereby suffering significant financial loss, reputational damage, and disruption of long term contractual expectations.
 - n. The Defendants continue to misrepresent themselves to stakeholders, causing irreparable harm to the Defendant's credibility, business relationships and legal entitlements.
4. The Application is opposed by the 1st, 2nd, 3rd and 4th Respondents vide a Replying Affidavit dated 5th June, 2025 sworn by Joseph Karanja Murathi Kinuthia in which he avers as follows;
1. That I am a male adult of sound mind, the 4th Respondent herein and a director in the 2nd Respondent Company. I have also been authorized by the 1st and 3rd Respondent to swear this affidavit in response. I am therefore duly authorized and competent to swear this Affidavit on behalf of all the Respondents herein.
 2. That I am aware that through the referenced Application, the Applicant seeks temporary/ interim injunction to inter alia: restrain the 2nd Respondent from presenting itself as the project implementor of the Regeneration Kenya Project (hereinafter "the Project"); restrain the Respondents from accessing or managing the project assets, goodwill, donor funds (sic); restrain the Respondents from withdrawing, transferring or dealing with the donor funds (sic); compel the 1st and 27 Respondent to deposit all donor funds (sic) in dispute into an escrow account and that the Court issue an injunction restraining the Respondents from conducting any actions resulting in alienation or depletion of the disputed funds (sic).
 3. That I am advised by the Respondents' Advocates on record, which advice I believe to be true and accurate, that the Applicant is required to demonstrate to this Honourable Court before grant of the sought temporary injunction, the sequentially tripartite test, to wit; demonstrate the existence of a prima facie case; demonstrate the risk of incurring irreparable loss that cannot be adequately compensated for by an award for damages; and demonstrate that the balance of convenience tilts in favor of the grant of the orders sought.
 4. That I am reliably informed that the Applicant's Notice of Motion Application dated 21st May 2025 raises no justiciable grounds for grant of the orders sought.
 5. That I am advised by the Respondent's Advocates on record which advice I believe to be true and accurate that the Applicants have not demonstrated any prima facie case owing from the Applicants to the Respondent.
 6. That I am reliably informed that on or about the 12th of December 2023, the 1st Respondent entered into a Service Agreement with the Applicant with the term of the agreement being for 12 years unless terminated earlier as per the agreement. The purpose of the Agreement was to outline the roles and responsibilities of the parties in relation to Regeneration Kenya (Kenya Reforestation and Sustainable Livelihood) Project (hereinafter referred to as "the Project").
 7. That contrary to the Applicant's assertions present at ground (a) in their application, the Applicant was not the 'exclusive project implementor' of the Project. The agreement only referred to the Applicant as an implementation partner. Ironically, the exclusivity envisioned under Clause 13 of the agreement was that the Applicant would work exclusively on the Regeneration Kenya Project to the exclusion of all other projects. I am reliably informed that



due to the robust and dynamic nature of carbon credit agreements, there is no exclusivity usually envisioned to ensure the project is implemented.

8. That I am also further informed that Clause 11 of the aforementioned agreement superseded all prior agreements and understandings whether oral or written between the parties herein. The binding agreement between the parties was therefore the Service Agreement of 12th December 2023.
9. That whereas the Applicant has relied on a series of Memoranda of Understanding (“MOUs”) entered to demonstrate an alleged breach on the part of the Respondents, the Respondents would like to call into question the weight of these MOUs. First, it is noted that the Applicant makes reference MOUs made with four county governments. However, the Applicant includes in the affidavit as annexures only two such MOUs (to which any of the Respondents is party). One is made with the Kenya Forest Research Institute (FK-4C) (which is a corporate body established by the Government of Kenya and not in fact a “county government”). The document FK-4B appears to be a letter sent only to the Applicant by the County Government of Nakuru, which appears to contemplate the Applicant entering into a Memorandum of Understanding, but no such document (to which any of the Respondents is party) has been produced.
10. That it is the Respondents’ position that the MOUs were not binding on any of the parties therein. It is for reasons including the following: 1) that a Service Agreement which superseded previous agreements and understandings was executed, thus exhibiting the document that parties wished to be bound by, and 2) that many if not all of the terms stipulated in the MOUs were by their nature (and particularly in view of subsequent developments) clearly intended to be principles for discussion and further negotiations only.
11. Subsequent thereto, on or about 1st February 2024, the 2nd Respondent and the Applicant’s Chief Executive Officer (“Festus Kiplagat”) who is also the deponent in the present Application, entered into a Contract Service Agreement. The said agreement sought to have the Applicant’s deponent provide advice and assistance to the 1st Respondent towards implementation of the project as a Contractor.
12. I am reliably informed that sometime in February 2024, barely two months after the Service Level Agreement was signed with the Applicant, it had come to the 1st Respondent’s attention that the Applicant did not have the capacity to implement the project to ensure its deliverables. The 1st Respondent thus called for a series of meetings between the Applicant and representatives of the Respondents. In the said meetings, the Applicant’s Chief Executive Officer (“Festus Kiplagat”) admitted that the Applicant’s staff did not possess the requisite skills to ensure complete project deliverables. There was therefore a need for the 1st Respondent to spearhead the implementation of the project.
13. That the position was then harmonized into an employment relationship via an Employment Contract between the 2nd Respondent (a local subsidiary of the 15th Respondent) and the Applicant’s deponent, Mr. Festus Kiplagat. Under the said agreement, Festus was appointed as the 2nd Respondent’s Executive Director of Africa.
14. AT the insistence of Mr. Kiplagat, the 2nd Respondent also on boarded a team of individuals introduced by the Applicant to ensure a smooth transition of operations and implementation from the Applicant to the 1st Respondent. The employees included among others, Dr. Samson Okoth Ojunga who was appointed as the 2nd Respondent’s Director of Operations



— Agroforestry & Nursery and Yator Rerimoi Geoffrey who was appointed as the 2nd Respondent's Program Manager.

15. I am reliably advised by the Respondents' Advocates on record which advice I verily believe to be true and accurate that the Applicant's Application is marred with material non-disclosures and misrepresentations by the Applicant. Whereas the Applicant has, at Paragraph 14 of the Supporting Affidavit, attempted to allege that its employees have been terminated by the Respondents, the annexures relied on. The Respondents are therefore at a loss as to how the 2nd Respondent could proceed to terminate people who are not under their employment, yet the Applicant's own documents exhibit an employment relationship.
16. That the Applicant's disingenuousness is further exhibited by the fact that its Executive Director and the deponent herein, who is also a former employee of the 2nd Respondent, has tactfully left out both his own contractor agreement and later contract of employment which ideally sets out the auspice under which he was performing his duties. It therefore seems the height of absurdity for the Applicant to seek to allege that any of the Respondents were in any sense acting less than transparently about the incorporation and/or the role of the 2nd Respondent when it literally engaged (and latterly employed) the Executive Director and the deponent of the Applicant to advise (among other things) on the formation, and structuring of the operations of the 2nd Respondent, and the terms under which the Applicant's other employees should be employed by the 2nd Respondent. Surely the Applicant must be deemed to have the knowledge that belonged to its Executive Director. The Respondents call out the Applicant's approach to this Honorable Court with the most unclean of hands.
17. That notwithstanding the above, it is the Respondents' position that the moment the Applicant's introduced associates affiliated with it into the 2nd Respondent's employ, the Applicant in effect ceased performing any implementing partner duties. The 1st Respondent (by itself or through others) therefore took up field implementation activities by themselves and by conduct of the parties to the Service Agreement.
18. That this position is supported by the fact that the Applicant has not annexed any scintilla of evidence exhibiting the supposed performance of implementing partner duties. The Applicant has also not provided any evidence of any invoices raised past May 2024 as from the subsequent month (June 2024), the implementation of the project was now being performed by others under the direction of the 1st Respondent and/or 2nd Respondent. The Respondents are therefore at a loss as to how the Applicant is presenting themselves as an Implementing Partner, yet it had no employees at least from the period April 2024 until April 2025 and has not been able to show any evidence that any work has been done by it (i.e. for which it is able to invoice) for over a year now.
19. The Respondents are also dumbfounded as to the Applicant's prayers for the alleged 'donor funds'. The 1st and 2nd Respondent are limited liability companies with the 1st Respondent being incorporated in Sweden and the 2nd Respondent being incorporated in Kenya. It is the Applicant who is a Public Benefit Organization. Additionally, despite the Applicant alleging that there are donor funds, there is no evidence annexed to the Applicant's application that demonstrates either the presence or the access to 'donor funds' from the Respondents directed or remitted to the Applicant or "donor funds formerly assigned to the Plaintiff" as asserted in prayer 3 of the Application.
20. The funds that were availed to the Applicant were sub-contractor fees for works (purportedly) performed and paid from the 1st or the 2nd Respondents' working capital. It is the



Respondent's position that there are no funds due and owing to the Applicant. Again, as no invoices were submitted by the Applicant to any of the Respondents in the past year, it appears to be the case that the Applicant has presented no claim that any amount is due and owing.

21. That in a further and baseless attempt at evidence, the Applicant alludes to a bank account at Diamond Trust Bank for purposes of "transacting donor funds" (without actually stating that such account was actually opened or providing any evidence of its existence).
22. I am reliably informed that the aforementioned minutes featured employees of the Applicant with no representation from the 1st or 2nd Respondents. During the alleged meeting, the Applicant apparently passes a resolution to open a bank account and have the 3rd Respondent as a signatory.
23. I am reliably informed that there is no evidence that the 3rd Respondent ever approved of matters apparently decided involving him. There is also no evidence that the said bank account was ever opened (and certainly not with the 3rd Respondent's consent) or, if it was opened, that it has ever transacted in or ever contained 'donor funds' received from any of the Respondents.
24. That further, the letter from the NGO Coordination Board is also not copied to any of the Respondents. As it is, there is no evidence that the Respondents were ever aware of the said bank account (if it was opened). The fact that this is apparently the only evidence to support the Applicant's contention that there either existed any "donor funds" or that these had been "formerly assigned to" the Applicant or that such funds ever were or are being diverted is ludicrous to say the least.
25. The Respondents posit that during the course of the project implementation; there were myriad discrepancies and inefficiencies that were carried out by those of the 2nd Respondent's employees who had previously been employees of the Applicant.
26. The 2nd Respondent received responses to the said show causes and with the same being deemed unsatisfactory, the aforementioned employees were invited for disciplinary hearings.
27. The said disciplinary hearing took place on 20th March 2025. It is imperative to note that the Applicant's Executive Director and deponent did not show up for the said hearing and instead opted to respond through lawyers, Messrs. Kiptoon and Company Advocates attempting to vacate the said hearing date. With the representations being meagre, the 2nd Applicant proceeded to dismiss the employees, including the Applicant's deponent.
28. WITH the said employees having worked for the 2nd Respondent for a significant period, it is the Respondents' position that the 1st Respondent now had sufficient capacity built to continue with the project implementation. The role of the Applicant now became superfluous as it was not carrying out any implementation duties.
29. IN view of the foregoing and noting that the Applicant's position regarding the implementation of the project was now moot, the 1st Respondent proceeded to issue the Applicant with a Termination Notice dated 4th April 2025. I personally had a phone call with Applicant through its Chief Executive, Festus Kiplagat and later served the said Notice by a copy of the notice by Email and WhatsApp.
30. FOR clarity and on account of the Applicant's shortcomings in implementing the project, the 1st Respondent issued a notice to terminate the Service Level Agreement in accordance with Clause 6 of the Agreement.



31. The Respondents therefore dispute the averments under paragraph 17 of the Supporting Affidavit where the Applicant states that the said termination took place without an opportunity for the Applicant to address any concerns or misunderstandings. The Respondents reiterate the meetings that took place on or about February and March 2024 wherein it was quite clear to the 1st Respondent that the Applicant was not in a capacity to implement the project. It was for that reason that the 2nd Respondent took over the employment responsibility of the implementing team including the Executive Director and deponent of the Applicant. The Respondents still contend that the role of the Applicant had now become superfluous.
32. I am reliably informed by the Respondents' advocates on record, which advice I verily believe to be true and accurate, that parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved. With the Applicant not advancing any of the exceptions, the Respondents invite the Court to hold that the Notice of Termination of the agreement issued by the 1st Respondent was in accordance with Clause 6 of the Service Level Agreement and has the legal effects stipulated therein.
33. That I am reliably informed that on or about 29th of May 2025, the Firm of CD Nyamweya & CO. Advocates filed a Notice of Appointment dated 27th May 2025 to appear alongside Messrs. Kimaru Kimutai & Company Advocates on behalf of the Applicant. I am further informed that when the matter came up on 29th May 2025, a Mr. CD Nyamweya appeared alongside a Mr. Kimaru, addressed the Court as Counsel for the Applicant and sought the grant of interim injunction pending determination of the application.
34. That the Applicant has now served upon the Respondents' Counsel a Supplementary Affidavit sworn by Festus Kiplagat on 3rd June 2025. The said Affidavit has been commissioned by the Firm of CD Nyamweya & Co. Advocates. I am reliably advised by the Respondents' advocates on record which advice I verily believe to be true and accurate that the Supplementary Affidavit as has been commissioned is a grave violation of Section 4 (1) of the [Oaths and Statutory Declarations Act](#) which prohibits an Advocate from commissioning a document in proceedings where the commissioner appears for any of the parties, it therefore follows that the Supplementary Affidavit should be struck out and the contents therein disregarded in their entirety.
35. That notwithstanding the foregoing, the Applicant has in the Supplementary Affidavit relied on an alleged communication marked as exhibit FK-8A and between the 3rd Respondent and the Applicant, as evidence of coercion. It is imperative to note that the supposed communication is taking place on or about the 13th of May 2025. This was after the Notice of termination of the Services Agreement had already been served upon the Applicant.
36. The Applicant cannot therefore allege that the contents of the alleged aforementioned email offer was meant to coerce/bribe them into "abandoning its legitimate rights and statutory obligations" as there was already a Notice of Termination that had been issued. Further, Clause 6 of the Agreement provided that Termination would result in the loss of entire benefits or revenue that the project was expected to accrue. Strictly speaking, the Applicant had no skin in the game.
37. The said points raised were clearly stated to be not an offer but instead merely an invitation to treat (i.e. "for discussion only" in connection with a genuine attempt to settle and resolve a potential conflict, i.e. on a without prejudice basis and as a token/goodwill gesture.



38. The Respondents also deem annexure FK-8A as an afterthought as Applicant has not demonstrated how the supposed email communication of 13th May 2025 was not in their possession when filing this present application eight days later.
 39. The Applicant has also relied on a Nursery Agreement marked as exhibits FK - 9. The said agreement is not executed by any party and does not include any of the Respondents as a party. The Respondents are therefore not bound by any of the terms contained therein.
 40. That in further response to the exhibit marked as FK-10 in the Supplementary Affidavit, the Respondents rely on the agreement entered into on or about 12th December 2023. The Respondents reiterate that Clause 11 stated that the Services Agreement of 12th December 2023 superseded all prior agreements and understanding. If the Agreement of 31st August 2023 has any relevance, it is rather to underscore (in support of the Respondents' position) that the situation had decidedly moved on from what may have been discussed in connection with the MoU of 2022, further illustrating how the said MoU cannot be regarded as having any continuing effect. Indeed, it is noteworthy that Clause 11 of the Annex to the 31 August 2023 Contractor Agreement also has a so-called entire agreement clause.
 41. The Project also seeks to grow and maintain up to 40 million trees and restore 26,000 ha of degraded land. The net effect of this would be the sequestering of millions of tonnes of carbon between the years 2024 and 2068. The balance of convenience cannot possibly be in the Applicant's favor.
5. The Plaintiff/Applicant also filed a Further Affidavit dated 9th June 2025 sworn by the said Festus Kiplagat in which he averred;
 - a. That the Respondent's reliance on JK-4 as a standalone agreement, to the exclusion of the Applicant, constitutes an implied denial of contractual privity. However, given the foundational role played by the Applicant and the prior Service Agreement, equity intervenes to prevent the Respondents from benefiting from their exclusionary conduct
 - b. The Respondent's argument that the Applicant lacks privity is evasive and opportunistic. The Applicant's contractual relationship stems from the Service Agreement, which remains binding, valid and unrevoked. The Applicant's exclusion from subsequent dealings does not extinguish its legal standing, especially where that exclusion was a deliberate act intended to circumvent the Applicant's rights.
 - c. The Respondents specifically the 1st and 3rd Respondents are estopped from denying the Applicant's entitlements to the benefits of the project after using its brand, networks and groundwork to build and launch the project.
 6. The Application was canvassed by way of written submissions.

Applicant Written Submissions

7. The Applicant filed submissions dated 9th June 2025 where the Counsel on record listed down 3 issues for determination as follows;
 - a. Whether the Respondents' Grounds of Opposition dated 27th May 2025 should be upheld
 - b. Whether the Applicant has met the threshold for the grant of interim injunctive and preservation orders.



- c. Whether the Court should preserve the substratum of the substantive suit through escrow arrangements.

The applicant's rebuttal to the Grounds of Opposition dated 27 may 2025

8. The Learned Counsel submitted that the Respondents have made a bare averment without providing any specific legal or factual basis and that the assertion of incompetence is not substantiated by reference to any procedural defect, statutory provision, or case law. Counsel submitted that the Application is supported by a properly sworn affidavit containing cogent facts, including: GPI's standing in relation to the disputed project; Evidence of continuing harm if injunctive reliefs not granted and prima facie rights that require urgent protection pending hearing and determination. Moreover, Counsel submitted as follows;
 - a. On prima facie case, the Applicant has demonstrated that it was the exclusive local implementing partner under binding Memoranda of Understandings (MoUs) and a Service Level Agreement. These rights were unlawfully usurped by the Respondents, who incorporated a proxy entity and fraudulently diverted donor funds and operational control.
 - b. On irreparable harm: The Applicant has endured reputational damage, staff destabilization, and unauthorized exploitation of its intellectual, logistical, and community based assets. These injuries are systemic and cannot be remedied through damages alone.
 - c. On balance of convenience: The Applicant has already completed critical implementation work and maintains community trust, donor recognition, and institutional legitimacy. The Respondents stand to lose nothing lawful by being restrained. Preservation of the status quo therefore favors the Applicant. Reference was made by *Giella v Cassman Brown* [1973] EA 358.
9. The Learned Counsel submitted that the abuse of process must be proven by showing intentional misuse or ulterior motive and no such evidence has been provided or demonstrated by the Respondents. Counsel also submitted that the Application seeks lawful interim relief to preserve the subject matter and prevent irreparable harm, a legitimate use of court process and the Respondent is attempting to shield unlawful conduct behind procedural rhetoric. It was also submitted that an abuse of process requires more than dissatisfaction with the relief sought; it requires evidence of mala fides or frivolity, none of which have been established by the Respondent through its response.
10. Moreover, it was submitted that the orders sought by the Applicant are legally sustainable under the *Giella* principles, and particularly warranted due to: The risk of continuing violations or dispossession; The need to maintain project integrity and prevent unjust enrichment and denying interim relief would effectively render the main suit nugatory. Reference was made to the case of *Mrao Ltd Vs First American Bank of Kenya Ltd & 2 others* (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR). The Applicant also stated through its counsel that it has demonstrated that if the Respondents are allowed to continue with fraudulently divert Donor Funds and operations to the 2nd Respondent, the Applicant's contractual rights and the implementation of the Project- as the Donor intended will be irreversibly compromised.

The Application dated 21 may 2025

Interim Injunctive Relief

11. The Learned Counsel submitted that the grant of interim injunctive relief is a discretionary, equitable remedy governed by settled principles under Kenyan law. Counsel moreover stated that as established



- in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, and refined in *Nguruman Limited v Jan Bonde Nielson* [2014] KEHC 1718 (KLR), a party seeking injunctive orders must satisfy a threefold test: Establish a prima facie case with a probability of success; Demonstrate that they will suffer irreparable harm that cannot be adequately compensated by damages; and Where the court is in doubt, the matter must be determined on a balance of convenience.
12. The Applicant's Counsel submitted that the Applicant had largely demonstrated that it has met the applicable threshold as follows hereunder and that in the present case, the Applicant's claim arises from clear and binding legal instruments: The MoU and the SLA that contractually accords the Applicant contractual rights and obligations. It was also submitted that these agreements expressly designated the Applicant as the exclusive local implementing partner for the Project and the Applicant's role was not symbolic, it carried the full operational mandate: identifying sites, engaging communities, verifying land ownership, and executing afforestation protocols.
 13. Moreover, the Applicant submitted that the Respondents, particularly the 1st and 3rd Respondents, do not dispute the existence of these valid agreements and on 7th December 2023 without issuing a formal termination notice or invoking Clause 6 of the SLA against the Applicant, the 3rd Respondent incorporated the 2nd Respondent, diverted Donor Funds and redirected operational control to it while the Applicant was still the exclusive implementing partner under a valid MoU and SLA which guided the contractual underpinnings of the Project between the Applicant, the Donor, the 1st Respondent. Counsel submitted that the 2nd Respondent was made to implement the Project without any formal termination of contract against the Applicant, thereby diverting the Applicant's staff, data, operations, and Donor goodwill without notice, consent, or compensation to the Applicant.
 14. It was also submitted that crucially, the 2nd Respondent was not and has never been party to any national or county-level Memorandum of Understanding signed by the Applicant to implement the Project, and had no legal or contractual basis to assume project control. Yet it began acting as the implementing partner, issuing "Notices to Show Cause" to Applicant's staff, misrepresenting its mandate to county officials, and recruiting staff under false authority.
 15. It was submitted that these actions are not only a breach of contract; they constitute constructive termination of contracts, fraud, and unlawful interference with business expectancy, establishing a prima facie case that is not only arguable but compelling. Reference was made in the case of *Kenya Commercial Bank Limited Vs Papatlal Madhavji another* [2019] KECA 799 (KLR, where the Court held that Memoranda of Understanding become binding when the parties act upon them with mutual reliance. It was also submitted that with the reference to the case of *Total Kenya Limited v Kenya Revenue Authority* [2013] KECA 437 (KLR) which affirmed that operational frameworks such as Service Level Agreements constitute enforceable contracts when relied upon. Reference was also made in the case of *David Owino v Kenya Institute of Management* [2019], Civil Case 159 of 2019, where the Court held that restructuring without notice amounts to constructive dismissal—solidifying the wrongfulness of actions taken without procedural fairness. The learned counsel stated that in the case of *Chege v Paramount Bank* (referencing *John Nduva Wambua v Kioko Makaya* [2019] eKLR), the Court held that interlocutory injunctions serve to protect the status quo relief where damages are found to be inadequate.
 16. Counsel submitted that irreparable harm is evident, loss of the binding agreements, brand or operational pending final determination and only refuse such damage, and employment rights cannot adequately be compensated with damages and that therefore, the balance of convenience favors granting an injunction to maintain the status quo and protect contractual entitlements until full trial. It was the counsel's submission that the foregoing establishes a strong prima facie case of fraud, breach of contract, and economic sabotage on the Respondents' part and reference was made to the case of



Safaricom Limited v Ocean View Beach Hotel Limited 2 others [2015] KEHC 6370 (KLR); Nyambu v Tune another (Civil Suit 85 of 2019) [2023] KEELC 821(KLR).

17. The Learned Counsel submitted that there is imminent danger of the Applicant suffering irreparable harm not compensable by damages and that there is no adequate remedy for the losses already suffered or yet to be suffered and made reference to the case of Nguruman Limited v Jan Bonde Nielson [2014] KEHC 1718 (KLR), where the Court clarified that irreparable injury means harm that cannot be adequately remedied through monetary compensation or where damages are difficult to quantify with precision.
18. The Counsel opined that on the second factor, that the applicant must establish that he might otherwise suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Counsel opined that here the Applicant's injury is not merely financial and the 2nd Respondent, acting without any legitimate authority, has begun dismantling the Applicant's institutional structure, repurposing its project models, and unlawfully exploiting its field data, goodwill, and staff. It was stated that the Notices to Show Cause issued to the Applicant's employees (Annexures FK-6A, FK-6B, FK-7A, and FK-7B) reveal a systematic attempt to displace and absorb the Applicant's operations and worse still, the Respondents are misrepresenting the Applicant's role to donor agencies and county governments.
19. Counsel submitted that these actions cause permanent reputational harm, undermining donor confidence and damaging years of reputation and relationship-building in the highly sensitive and trust-based climate finance sector. Such reputational loss cannot be measured or reversed through damages alone. Moreover, Counsel added that the effect of the Respondents' fraudulent actions that the Applicant is bound to suffer (immediately or in the long run), and which cannot be compensated by way of damages is: Loss of brand identity and goodwill and community trust and donor confidence; Misappropriation of the Donor Funds under the false pretences of continuity; Erosion of trust with government stakeholders and carbon certifiers; Displacement of trained staff through illegal notices and terminations and Vitiating of public interest in climate justice and transparent donor funding.
20. Counsel also opined that the Applicant is suffering harm that cannot be quantified or reversed, making it irreparable and made reference to the case of In City Eye Advertising Agency v Safaricom Limited (PLC) (Commercial Case E391 of 2023) [2024] KEHC 14513, where the High Court granted an interlocutory injunction, holding that the plaintiff "shall suffer irreparable harm that cannot be compensated by damages" due to the misuse of its registered trademark and potential erosion of consumer goodwill. Counsel noted that it aligned with the principle in Style Industries Limited v Sana Industries Co. Limited [2018] eKLR, where brand injury was deemed unmeasurable and intangible, and requiring equitable protection.
21. Furthermore, counsel submitted that where projects of significant environmental and social impact are challenged, courts have consistently held that the public interest is a paramount consideration, warranting heightened judicial oversight and made reference to the case of Save Lamu 5 others v National Environmental Management Authority (Nema) another [2019] KEELC 4739 (KLR), where the National Environment Tribunal underscored the centrality of climate justice and community rights in public interest environmental litigation. It revoked the EIA license, finding the assessment "scientifically insufficient" notably for failing to comply with mandatory public participation and ignoring the *Climate Change Act* 2016— observing that "Climate Change issues are pertinent in projects of this nature.". It was the counsel's submission that in light of the concerns raised herein, including deficiencies in stakeholder consultation, environmental risks, and procedural irregularities, this Court is called upon to exercise its protective jurisdiction.



22. The Learned Counsel submitted that the balance of convenience requires the Court to ask: Who stands to suffer greater harm if the status quo is not preserved? Counsel opined that the Applicant has already completed key project milestones, i.e. community mobilization, GPS mapping of over 72,000 hectares, verification of approximately 5,000 households, and the signing of consent forms and that these are not abstract deliverables; they are the foundation of the Project; the Applicant is apprehensive that if the Respondents are allowed to continue operations under the 2nd Respondent's illegitimate structure, the Applicant's verified data, intellectual property, community networks, and carbon offset protocols will be irreversibly appropriated, misused, or misrepresented, undermining future funding eligibility and project integrity. Reference was made to the case of the Court of Appeal in *Kenya Breweries Ltd & Another v Washington O. Okeyo* [2002] 1 EA 109 which reaffirmed the strict threshold applicable to interlocutory mandatory injunctions. It held that such relief should only be granted in clear and compelling circumstances, where there exists a high degree of assurance that the applicant will succeed at trial, and where the balance of convenience overwhelmingly favors intervention.
23. It was the learned counsel's submission that where the substratum of a contract is in imminent danger of being eroded or rendered nugatory, Kenyan courts have shown a judicial inclination toward preserving the status quo pending determination, as opposed to granting interim relief that amounts to substantive restitution and made reference to the case of *Kenya Deposit Insurance Corporation (as Liquidator of Dubai Bank Kenya Limited) v Rapid Communications Limited 2 others Bank of Africa Kenya Limited 2 others (Interested Party)* [2019] KECA 410 (KLR), where the High Court ordered deposit of funds into an interest-earning escrow account pending determination, exemplifying an active preservation strategy over immediate restitution.

The Preservation of Donor Funds in an Escrow Account to Protect Public Policy and Interest

24. On this issue, Learned Counsel submitted that this Project involves KES 20 billion in donor funding earmarked for climate resilience, a domain governed by strict environmental, ethical, and financial standards and allowing continued access to and use of those funds by the Respondents without oversight and during active litigation would: Expose the funds to mismanagement, diversion, or fraudulent application; Undermine public confidence in Kenya's donor governance systems; Diminish the effectiveness of community-based climate initiatives, which depend on the trust and accountability built by organizations like the Applicant.
25. Counsel also submitted that preserving the funds in a jointly managed escrow account, as prayed for by the Applicant, allows the Court to: Preserve the substratum of the suit; Prevent the cause of action from being rendered illusory; Maintain neutrality and oversight pending judgment; Uphold Kenya's constitutional values of transparency as provided under Article 10 of the *constitution*, 2010 and accountability. Counsel noted that the contested subject matter is in monetary form, and there's a credible risk of dissipation or diversion, the court should preserve those funds in a neutral, controlled structure such as escrow, to preserve fairness and accountability and made reference to the case of *Izera Enterprises Ltd V Image Font Ltd* [2021] KEELC 1694 (KLR). It was also noted that in more complex cross-border disputes, Kenyan courts have also drawn from international best practices to preserve the integrity of contested assets and reference was made to the case of *Kenya Deposit Insurance Corporation (as Liquidator of Dubai Bank Kenya Ltd) v Rapid Communications Ltd & 2 others* [2019], where the Court of Appeal ordered that disputed funds be deposited into an interest-earning escrow account, jointly managed by the parties' advocates, pending the determination of the matter.



Defendants/Respondents Written Submissions

26. The Respondents filed submissions dated 5th June 2025. This was Lodged in Opposition of the Applicant’s Notice of Motion Application Dated 21st May, 2025, the Supplementary Affidavit sworn on 3rd June 2025 and in Support of the Respondent’s Grounds of Opposition Dated 27th May, 2025 as well as the Replying Affidavit sworn on 5th June 2025). The Counsel on record submitted 2 issues for determination as follows;
- a. Whether the Applicant is deserving of the Orders sought
 - b. Whether the Applicant’s Supplementary Affidavit should be struck out?

Whether the applicant is deserving of the orders sought?

27. The Learned Counsel for the Respondent submitted that the Applicant is not deserving of the injunctive orders sought in the Notice of Motion dated 21st May 2025. In urging the court to dismiss the Application, Counsel relied on the well-settled principles in *Giella v Cassman Brown Co. Ltd*, emphasizing that the Applicant had not satisfied the tripartite threshold required for the grant of interlocutory injunctions—namely, establishing a prima facie case, demonstrating irreparable harm, and proving that the balance of convenience tilts in their favor.
28. The Learned Counsel further submitted that the Applicant had failed to demonstrate a prima facie case with a probability of success as enunciated in *Mrao Ltd V First American Bank of Kenya Ltd & 2 others [2003] KLR 125* and *Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)* where it was held thus; “... The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion...”. It was contended that there exists no clear or unmistakable right that is being violated or threatened by the Respondents’ conduct. Counsel argued that the Applicant had ceased performing any project implementation functions following the subsuming of its employees by the 2nd Respondent, and had not substantiated claims regarding donor funding or access thereto.
29. Counsel submitted that the Application is based purely on an alleged breach of contract, which if proven, is capable of redress by way of damages. Therefore, the requirement of irreparable harm has not been met. Reference was made to *Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] EA 86* where it was held that “... If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between. Reference was also made to the case of *Nguruman Ltd (supra)* to reinforce that monetary compensation is an adequate remedy in contractual disputes of this nature.
30. Additionally, the Respondents submitted urging this Honourable Court to take into consideration the Public Interest element that was underscored by the Supreme Court in the Case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* and that before issuing any such injunctive order as was emphasized by the Court in the case of *Obuya Bagaka vs. Kenya School of Government*



(supra): “There is, however, more to consider beyond the criteria in *Giella v Cassman Brown* when considering an application for conservatory orders. Applying the principles set by the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* (supra), considerations such as public interest should therefore be borne in mind by the court when considering whether to grant relief in the form of a conservatory order, whether at an interlocutory stage of the proceedings or upon full hearing.” (Emphasis added).

31. It was further submitted by the Learned Counsel for the Respondent that the balance of convenience and public interest overwhelmingly favor the Respondents. The project in question is of national environmental significance involving 14.5 million seedlings, over 5,000 households, and approximately 56,000 acres under afforestation. Granting an injunction would halt implementation during the long rains season—Kenya’s prime planting window—and undermine the country’s policy objective of attaining 30% forest cover.

On the issue of the Applicant’s Supplementary Affidavit

32. Counsel submitted that it ought to be struck out for offending Section 4(1) of the [*Oaths and Statutory Declarations Act*](#). The affidavit, sworn on 3rd June 2025, was drawn by M/S Kimaru Kimutai & Co. Advocates and commissioned by Mr. Charles Duke Nyamweya, a partner in CD Nyamweya & Co. Advocates, both firms being on record for the Applicant. Relying on *Munga & 9 others v Nyamawi & 5 others* [2023] KECA 1321 (KLR) and *Maureen Nyambura Ngigi Warui v Board of Directors, KPLC & 2 others* [2020] eKLR, Counsel submitted that the said affidavit is fatally defective, and its admission would amount to an affront to statutory requirements and cannot be saved by Article 159 of the [*constitution*](#).
33. In conclusion, Counsel for the Respondents urged the Court to dismiss the Applicant’s Notice of Motion with costs for failing to meet the threshold for injunctive relief, for violating statutory provisions governing affidavits, and for attempting to obstruct an environmentally and socially critical project without just cause.

Analysis and Determination

34. The instant matter primarily seeks an interim injunctive relief arising from a commercial dispute in the environmental and climate sector. The Applicant, Green Planet Initiative 2050 Foundation, seeks various interim orders against EarthBanc AB, EarthTree Company Limited, Khanna Rishabh, and Joseph Karanja Murathi Kinuthia in relation to the implementation of the Regeneration Kenya Project, a significant reforestation initiative valued at KES 20 billion and spanning four counties in Kenya.
35. The dispute centers on competing claims over the right to implement this environmentally critical project, with the Applicant alleging unlawful usurpation of its role as the exclusive implementing partner, misappropriation of donor funds, and systematic dismantling of its operations by the Respondents. The Respondents, conversely, argue that the Applicant’s role has been lawfully terminated due to its inability to deliver on project requirements, and that the transition of implementation responsibilities to the 2nd Respondent was both necessary and legally justified.
36. The principles guiding the grant of interlocutory injunction are now well settled. Those principles were set out in *East African Industries vs. Trufoods* [1972] EA 420 and *Giella vs. Cassman Brown &*



Co. Ltd [1973] EA 358. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court restated the law as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate 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.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”

37. The Court of Appeal in the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 others* [2014] eKLR further opined that:

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

38. While reiterating the said principles, Ringera, J (as he then was) in *Airland Tours & Travel Limited vs. National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2002 stated that in an interlocutory application the Court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law. That was the same position adopted in the dicta in *Nairobi High Court Civil Case No. 517 of*



2014 – Lucy Nungari Ngigi & 4 Others -vs- National Bank of Kenya Limited & Anor (eKLR) where it was stated:

“...I am also aware that the 1st Defendant has raised issues in respect of the mortgage herein, their right to exercise the statutory power of sale, breach of the addendum, default of repayment of the loan etc. They have also raised some accountability issues from the 2nd Defendant on the purchase price. But even these queries should be reserved for and determined at the trial. These issues are in direct conflict with issues raised by the Plaintiffs and the 2nd Defendant. At this stage I should not make any comments or findings, or express opinions on the substantive issues in controversy in order to avoid hurting the trial herein...”

39. As a preliminary matter, the Respondents challenge the admissibility of the Supplementary Affidavit dated 3rd June 2025, sworn by Festus Kiplagat and commissioned by Mr. Charles Duke Nyamweya of M/s CD Nyamweya & Co. Advocates. The Respondents contend this violates Section 4(1) of the [Oaths and Statutory Declarations Act](#), which prohibits an advocate from commissioning a document in proceedings where the commissioner appears for any of the parties.
40. I find that the Supplementary Affidavit is fatally defective, having been commissioned by an advocate appearing for the Applicant in these proceedings. This constitutes a clear violation of Section 4(1) of the [Oaths and Statutory Declarations Act](#). The affidavit is hereby struck out and its contents disregarded entirely in this determination.
41. The Applicant's case rests on several agreements which it claims establish its exclusive right to implement the Regeneration Kenya Project. These include a Memorandum of Understanding dated 22nd August 2022 with Worldview Impact Limited, a Service Level Agreement dated 12th December 2023 with the 1st Defendant, and various MOUs with county governments.
42. Having examined the evidence presented, I find that the Applicant has demonstrated a prima facie case that merits judicial consideration. The Service Level Agreement dated 12th December 2023 between the Applicant and the 1st Defendant clearly designates the Applicant as an implementing partner for the Regeneration Kenya Project. While the Respondents argue that this does not confer exclusivity, the agreement read together with the Memoranda of Understanding with county governments establishes a prima facie case, deserving a preservation of the funds in question pending the determination of the matter.
43. The Respondents' contention that the Service Level Agreement superseded all prior agreements under Clause 11 does not extinguish the foundational work and relationships established by the Applicant. The incorporation of the 2nd Defendant on 7th December 2023, shortly after the Service Level Agreement, and the subsequent diversion of operations and personnel raises serious questions about the lawfulness of the Respondents' conduct that go beyond mere contractual interpretation.
44. Additionally, the magnitude of this commercial dispute cannot be understated. This matter involves a project valued at KES 20 billion in donor funding for climate resilience across four counties, with far-reaching implications for Kenya's environmental objectives and international donor relations. The sheer scale of the financial exposure and the complexity of the competing claims necessitate a careful judicial oversight to preserve the integrity of the subject matter pending full adjudication.
45. In matters of such substantial commercial value, courts have consistently recognized the imperative to maintain the status quo to prevent the dissipation or erosion of the dispute's substratum. The risk that continued unrestrained conduct by any party might render the eventual judgment nugatory or unenforceable is particularly acute where large sums and ongoing operations are involved. I share



the view that preservation of contested assets through controlled mechanisms serves to maintain the efficacy of judicial determination.

46. The complexity of the competing claims involving contractual interpretation, corporate governance, employment relationships, and regulatory compliance requires thorough ventilation at trial. These are not matters that can be definitively resolved on affidavit evidence alone. The Applicant's allegations of fraudulent incorporation, unauthorized fund diversions, and systematic usurpation of operations, while strongly contested by the Respondents, raise questions of fact and law that demand full examination.
47. To preserve the subject matter of this substantial commercial dispute and ensure that justice can be meaningfully administered, it is necessary to impose interim measures that maintain the status quo without prejudicing either party's ultimate rights. This approach recognizes that in high-value commercial litigation, the preservation of assets and operational integrity pending determination serves the broader interests of commercial certainty and judicial effectiveness.
48. The public interest dimension of this dispute, involving donor funding earmarked for climate resilience, further underscores the need for a preservatory relief. Allowing uncontrolled access to such substantial funds during active litigation could undermine public confidence in Kenya's donor governance systems and potentially expose the funds to mismanagement or diversion. I am inspired by the following dicta in the case of *ENG Mee Young and Other v Letuchasan*. 1979 UKPC13 (4th April 79). " The guiding principle in granting an interlocutory injunction is the balance of convenience, there is no requirement that before an interlocutory injunction is granted the plaintiff should satisfy the court that there is a probability, a prima facie case or a strong prima facie case that if the action goes to trial, he will succeed, but before any question of a balance of convenience can arise, the party seeking the injunction must satisfy the court that his claim is neither frivolous or vexatious, in other words that the evidence before the court discloses there is a serious question to be tried, [*American Cyanamid v Ethicon Ltd.* (1975) AC396.
49. Given the weighty commercial nature of this dispute and the substantial sums involved, I find it appropriate to grant preservatory orders to maintain the integrity of the subject matter while allowing both parties the opportunity to fully ventilate their respective cases at trial underpinned under Articles 48 & 50 of the [constitution](#).
50. Accordingly, the following orders do abide:
 - a. Pending the hearing and determination of this suit, all parties are restrained from taking any action that would dissipate, alienate or diminish the subject matter of this dispute.
 - b. The disputed donor funds shall be deposited into an interest-bearing escrow account with a reputable financial institution recognized by the Central Bank of Kenya to be jointly managed by the advocates for the parties, with withdrawals requiring mutual consent or leave of this Court.
 - c. That this order given on the interim basis is not meant to render the joint venture between the parties voidable.
 - d. The 2nd Defendant is restrained from representing itself as having exclusive authority over the Regeneration Kenya Project pending determination of the competing claims.
 - e. Both parties are restrained from taking any action that would render the eventual judgment of this Court nugatory or unenforceable.



- f. This matter shall proceed for pre-trial hearing on 24.6.2025 given the substantial commercial interests at stake.
- g. Costs of this application shall be in the cause.

51. Orders accordingly.

SIGNED, DATE AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 13TH DAY OF JUNE 2025.

.....

R. NYAKUNDI

JUDGE

litigation@simba-advocates.com, kimarulaw@gmail.com, c.dnyamweya@yahoo.com

