



REPUBLIC OF KENYA



**Mission SOS International Incorporated v Mission SOS Africa Inc & 3 others
(Civil Case E005 of 2023) [2025] KEHC 7685 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7685 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL CASE E005 OF 2023
CM KARIUKI, J
JUNE 5, 2025**

BETWEEN

MISSION SOS INTERNATIONAL INCORPORATED PLAINTIFF

AND

MISSION SOS AFRICA INC 1ST RESPONDENT

DISHON MBUGUA (SUED AS THE GENERAL OVERSEER) 2ND RESPONDENT

**GABRIEL G CHARO (SUED AS THE GENERAL
SECRETARY) 3RD RESPONDENT**

**MARGARET NABWOBA (SUED AS THE GENERAL TREASURER) 4TH
RESPONDENT**

RULING

1. The Applicant, vide a notice of motion dated 20/11/2023, sought orders;
 - a. Spent.
 - b. Spent.
 - c. That an injunction be issued restraining the defendants/respondents, their agents, servants or employees from taking possession, transferring and/ or interfering in any manner with the plaintiff/applicant's quiet user and possession of the trucks, trailers and containers listed in the application pending the hearing and determination of the suit.
 - d. That the OCS Kilgoris police station to ensure compliance of the orders of this honourable court.
 - e. That costs be provided for.



2. The application is based on Order 40 Rule 1,2, Order 51 Rule 1 of the Civil Procedure Rules, and sections 1A, 1B, 3A, and 63(e) of the [Civil Procedure Act](#).
3. The application is based on the grounds set out on the face of the application and the supporting affidavit sworn by FIORE LONDINO on 20/11/2023.

The background.

4. The applicant and the respondents have, since the year 2018, been working together in the furtherance of charitable and religious works in Kenya and beyond.
5. The applicant contends that it invested donor funds to the tune of more than USD 1,500,000 to acquire the motor vehicles and equipment forming the subject matter of this suit.
6. the applicant contends that the respondents in breach of the trust relationship and with intent to defraud the applicant have resolved to take over, occupy, possess, and/or interfere with the applicant's operations at the mission SOS base in Kilgoris located on land titles numbers in which the said motor vehicles and equipment are domiciled.
7. The applicant, therefore, has sought preservation of the subject matter of the litigation.

The response.

8. The respondents opposed the application vide replying affidavit sworn by DISHON MBUGWA on 25/11/2024.
9. The respondents contend that the suit motor vehicles were lawfully acquired, registered, and are in the legal and beneficial ownership of the 1st and 5th Defendants, respectively. No complaint, objection, or caveat was ever lodged at any Police Station or with the National Transport Safety Authority (NTSA) against the process of purchase, transfer, or registration of the said motor vehicles either by the Plaintiff or any third party at the relevant time.
10. The respondents contend that the said assets were acquired as donations in the ordinary course of charitable collaboration, and there is no evidence of an express, resulting, or constructive trust in favour of the Plaintiff. The Plaintiff's allegations of breach of trust and fraud are unsubstantiated and lack factual foundation.
11. The respondents contend that the Plaintiff has not demonstrated the existence of a prima facie case with a probability of success as required under the law for the grant of interlocutory injunctive relief.
12. The respondents contend that the balance of convenience does not tilt in favour of the Plaintiff, and no irreparable loss has been shown. If the Plaintiff were to succeed, monetary compensation would suffice.
13. The respondents contend that the Plaintiff's application is an afterthought brought in bad faith with the intention of exerting pressure on the Defendants and disrupting their operations.

The supplementary affidavit

14. The applicant filed a supplementary affidavit sworn by Fiore Londino on 28/04/2025.
15. The applicant averred that it has taken the respondents over one and a half years to respond to the application for an injunction. The balance of convenience tilts in favour of the applicant at this stage.
16. The applicant averred that the motor vehicles and audiovisual equipment were purchased and imported by the applicant.



17. The applicant averred that the respondents have never had physical possession of the vehicles and audiovisual equipment. The assets are in the custody of the applicant, who continues to use the equipment for its charitable work all over East and Central Africa. The applicant employs over 50 people who operate, maintain, and manage the assets forming the subject matter of litigation herein. The respondents have not been the ones managing the assets.
18. The applicant contends that motor vehicle KDD 942J was bought by the applicant and registered in the names of the 4th respondent as trustee.
19. The applicant averred that it will suffer irreparable financial loss having invested about USD 1,500,000 if an injunction is not granted at this stage.

Directions of the court.

20. Vide orders issued on 22/11/2023, this court issued an order that due to fiduciary relationship among the parties and as a way of preserving the suit property, the balance of convenience at this early stage of the proceedings lie in granting relief on absolute interim basis. Accordingly, the court hereby issues a temporary injunction restraining the defendants, their agents and servants from taking possession or occupying or in any manner dealing with the properties listed in the application until the hearing of the application inter partes.

Analysis And Determination.

21. This court considered the application, the supporting affidavit, the replying affidavit, and the supplementary affidavit.

Issues

22. The main issue for determination:
 - i. Whether the Plaintiff/Applicant's Application has met the threshold established for the grant of temporary injunction pending hearing and determination of the suit.

Temporary injunction

23. The conditions set for consideration in granting an injunction are now well settled in the case of *Giella v Cassman Brown & Company Limited* [1973] EA 358, where the court expressed itself on the conditions that a party must satisfy;

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

24. The court defined “prima facie case” in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR as follows:

“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. We



reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini-trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed.”

25. The Applicant has also relied on the case of *Mrao Ltd. v First American Bank of Kenya Limited and 2 others* [2003] eKLR, where the Court held that:

“In civil cases, a prima facie is a case in which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues, but the evidence must show an infringement of a right and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”

26. In the present case, the applicant has demonstrated that there exists a relationship between the applicant and the respondents. The respondents have confirmed that the suit assets were acquired as donations in the ordinary course of charitable collaboration. These facts establish a prima facie case meriting trial.

27. 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. The applicant has averred that it donated about USD 1,500,000. If the respondents waste the suit assets, the applicants are likely to suffer financial loss.

28. On the third limb, regarding the balance of convenience, I am persuaded that it lies in favour of preserving the status quo. Preserving the suit assets pending
Should the claim ultimately succeed.

Trial ensures that justice can be meaningfully dispensed,

29. In light of the foregoing analysis and the discretion granted to this Court under Order 40 of the Civil Procedure Rules, I find that the Applicant has met the threshold for the grant of interlocutory injunctive relief. Consequently The Allowed.

Notice of Motion application dated 20/11/2023 is

30. Accordingly, I grant the following orders:

- i. That pending the hearing and determination of this suit, a temporary injunction be and is hereby granted restraining the defendants/respondents, their agents, servants or employees from taking possession, transferring and/ or interfering in any manner with the plaintiff/ applicant's quiet user and possession of the trucks, trailers and containers listed in the application pending the hearing and determination of the suit.
- ii. That is the OCS Kilgoris police station to ensure compliance with the orders of this honourable court.



iii. The costs of this application shall be in the cause.

31. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS
5TH DAY OF JUNE 2025.**

CHARLES KARIUKI

JUDGE

