



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ocean Pacific Shipping Line Limited v Ali & 2 others (Civil Case E038 of 2025) [2025] KEHC 9604 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9604 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL CASE E038 OF 2025  
G MUTAI, J  
JUNE 17, 2025**

**BETWEEN**

**OCEAN PACIFIC SHIPPING LINE LIMITED ..... PLAINTIFF**

**AND**

**ISMAIL MOHAMUD MOHAMED ALI ..... 1<sup>ST</sup> DEFENDANT**

**ABDIRAZAK SHEIK ..... 2<sup>ND</sup> DEFENDANT**

**SAMATAR INVESTMENT COMPANY LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application before the Court is dated 23<sup>rd</sup> April 2025. Vide the said application, the Plaintiff/Applicant seeks the following orders: -
  1. Spent;
  2. Spent;
  3. That the Court be pleased to issue an order of injunction restraining the defendants by themselves, agents, servants, and or employees from working on, interfering with, and or taking possession of the goods in container numbers MRSU 0567496 and CSCU 3040657 pending the hearing and determination of this suit, and that the Plaintiff to proceed with the shipment of the cargo urgently;
  4. That the costs of the application be borne by the Respondent.
2. The application is based on the grounds that the plaintiff is the consignee of the cargo in containers numbers MRSU 0567496 and CSCU 3040657, while the 1<sup>st</sup> defendant is the exporter. The plaintiff cleared payment of the cargo and loaded the same on motor vehicle registration numbers KCZ 080Y and KBR 614H with trailer numbers ZD 9000 and ZE 0877 from (South) Sudan to Mombasa. While



- the cargo was enroute to the latter port, the defendants interfered with the cargo and altered the tracking devices. This was done to steal and sell the cargo.
3. Following a report made by the plaintiff, the containers, upon their arrival in Mombasa, were detained. Container number MRSU 0567496 is detained at the Port Police Station, while container number CSCU 3040657 is at MCT.
  4. The application was supported by the annexed affidavit of Abdullatif Hasan Khan, sworn on 23<sup>rd</sup> April 2025, in which he deposed to the facts stated above.
  5. The Plaintiff/Applicant thus prayed for the issuance of the orders sought.
  6. In the plaint dated 13<sup>rd</sup> April 2025 the Plaintiff seeks declaration that the goods in containers numbers MRSU 0567496 and CSCU 3040657 belong to the Plaintiff, an order of injunction against the defendant from interfering with and or taking possession of goods in containers numbers MRSU 0567496 and CSCU 3040657, interest at Court rates and any other relief that the court may grant.
  7. On the 24<sup>th</sup> April 2025, this Court considered the said application ex parte and issued orders in terms of prayer 2. In particular, the Court issued an order to the effect that:-

“ That the Court hereby issue an order of injunction restraining the defendants by themselves, agents, servants and or employees from working on, interfering and or taking possession of the goods in containers numbers MRSU 0567496 and CSCU 3040657 pending the hearing and determination of this application and that the plaintiff to proceed with the shipment of the cargo urgently pending hearing interpartes.”
  8. The matter was fixed for hearing inter partes on 12<sup>th</sup> May 2025.
  9. Upon being served/made aware of the above orders the defendants/respondents filed the Notice of Motion application dated 2<sup>nd</sup> May 2025 seeking to have containers number MRSU 0567496 and CSCU 3040657 preserved pending the further direction of the Court, for the officer Commanding Port Police Station and KPA to take into custody container number MRSU 0567496 and to ensure that the same is not released to any with any part and for similar orders to issue to the General Manager Mombasa Container Terminal Ltd Freight Station in respect of container number CSCU 3040657.
  10. The application was premised on the grounds that the court erroneously issued permanent orders while considering an application for temporary reliefs, without affording the defendants/respondents a chance to be heard.
  11. The defendants/respondents urged that the Plaintiff and Abdul Latif Hassan Khan were in the process of shipping containers numbers MRSU 0567496 and CSCU 3040657 pursuant to the Court orders, while in real essence, the said containers belonged to the defendants and that they (the defendants) had been unlawfully dispossessed of the same.
  12. Upon the filing of the letter application, this Court ordered that the status quo be maintained until the application dated 23<sup>rd</sup> April 2025 was heard interpartes.
  13. The Plaintiff/Applicant filed Grounds of Opposition dated 5<sup>th</sup> May 2025 in which it was asserted that the application was frivolous and an abuse of the process of Court, that the Plaintiff was the only entity with the tile to the consignment in question, that the defendant had not raised any reasonable claim to warrant the orders sought and that the delay in consignment presented the Plaintiff with enormous cost and was prejudicial to it.



14. In opposition to the application dated 23<sup>rd</sup> April 2025 the defendants filed Grounds of opposition dated 9<sup>th</sup> May 2025 in which they denied that neither the Plaintiff nor Abdullatif Hassan Khan were Kenyan/domiciled in Kenya, there was no locus standi for the Plaintiff to bring the suit and that there was uncertainty as to who the true Plaintiff was and whether the goods were purchased. It was thus urged that the application was misconceived, incompetent, unlawful, and an abuse of the Court's process, and should be struck out with costs.
15. The defendants/respondents also filed a replying affidavit, sworn on 8th May 2025, by Abdirazak Ali Sheikh, in which they reiterated the contents of the Grounds of Opposition in detail.
16. Parties filed further affidavits, both sworn on 12<sup>th</sup> May 2025.
17. The application dated 23<sup>rd</sup> April 2025 was canvassed by way of oral submissions on 12<sup>th</sup> May 2025.
18. In his submissions, Mr. Magolo averred that his client bought four containers from the 3<sup>rd</sup> Respondent. It was able to export 2 of the said containers, leaving two others, which are the subject of the dispute. The dispute arose in Busia after the defendants broke seals, changed tracking devices, and attempted to divert the goods for export to China. It was urged that the goods belonged to the Plaintiff. The dispute was reported at Jomvu and Changamwe DCI. He accused the 1<sup>st</sup> and 2<sup>nd</sup> defendants of being brokers.
19. Mr. Magolo submitted that the Plaintiff/Applicant owned the goods and should be allowed to export the same. He lamented that Mombasa would face a serious reputation risk if it were perceived as a place where cargo would be stolen.
20. Mr. Mwangi, on the other hand, urged that ownership was by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants. He stated that the Plaintiff was the shipper of the goods and not the owner.
21. Counsel urged that the principles applicable when the court was considering the grant of an injunction had not been met insofar as the Plaintiff wasn't the owner of the goods. The Plaintiff did not have possession of the goods either.
22. Mr. Mwangi prayed that I dismiss the application for injunction dated 23<sup>rd</sup> April 2025 and allow the application dated 22<sup>nd</sup> May 2025.
23. I have considered the two applications, the responses thereto, as well as the written and oral submissions of the parties. The issue for determination is whether the Plaintiff has established a case for the grant of injunctive relief, and if not, whether the Court should instead order the maintenance of the status quo pending the hearing and determination of the instant suit.
24. The conditions under which an injunction may issue were considered in the case of *Giella v Cassman Brown & Company Limited* (1973) E A 358. The Court of Appeal for Eastern Africa expressed itself in the following terms:

“Firstly, 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.”



25. The above principles were expounded by the Court of Appeal in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR) where it was stated that:-

“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.”

26. I will then consider if the conditions have been met, in a sequential manner, without leapfrogging any of them. The first enquiry I must make is to establish if a prima facie case has been demonstrated.

27. What amounts to a Prima facie case was determined by the Court of Appeal in Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 123, where it was held as follows:-

“A prima facie case in a civil application includes, but is not confined to, a genuine and arguable case. It 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.”

28. This case arises from a dispute over the ownership of two containers. The Plaintiff and the defendants both claim ownership of the two containers. Has the Plaintiff shown that there is a prima facie case?

29. Based on the documents which were adduced, it would appear to me that the Plaintiff’s claim for ownership of the goods isn’t idle. The Plaintiff has a claim that ought to be considered and determined on its merits. That being the case, I am convinced that the Plaintiff has a prima facie.

30. The claim is in respect of goods of ascertainable value. I am not persuaded that, in the circumstances, an award of damages would not be adequate to compensate the Plaintiff in the event that its suit is successful.

31. Having found that award of damages is an adequate remedy, I need not consider where the balance of conscience lies. In the circumstances, the application for injunction falls and is dismissed.



32. In the application dated 2<sup>nd</sup> May 2025, the defendants seek to have the goods preserved pending the hearing and determination of the main suit.
33. Since the ownership of the goods is disputed and noting that the parties herein are all foreigners, justice in this case demands that the said goods be preserved in Kenya pending hearing and determination of the main suit.
34. Given the high storage costs, I direct that the matter be heard on a priority basis.
35. In the circumstances, the orders that therefore commend themselves to me are the following: -
  1. I dismiss the Notice of Motion dated 23<sup>rd</sup> April 2025; and
  2. Containers Nos. MRSU 0567496 and CSCU 3040657 to remain within the Port of Mombasa and MCT CFS pending the hearing and determination of the suit.
36. It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 17<sup>TH</sup> DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Magolo, for the Plaintiff/Applicant;

Mr Mwangi, for the Defendants/Respondents; and

Arthur – Court Assistant.

