



African Academy of Sciences v Science for Africa Foundation & another (Civil Case E200 of 2024) [2025] KEHC 12954 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E200 OF 2024
F GIKONYO, J
SEPTEMBER 18, 2025**

BETWEEN

AFRICAN ACADEMY OF SCIENCES PLAINTIFF

AND

SCIENCE FOR AFRICA FOUNDATION 1ST DEFENDANT

DR THOMAS MAINA KARIUKI 2ND DEFENDANT

RULING

1. The plaintiff has applied before this court, through the Notice of Motion dated 20th May 2024, for a temporary injunction to restrain the defendants from using the brand and mark “DELTAS” on any of its promotions, stages, platforms, websites, programmes, correspondence or documents to implement, promote and or otherwise deal with the brand and mark “DELTAS”.
2. The application is expressed to be made under sections 1A, 1B, 3A and 63 (e) of the [Civil Procedure Act](#) and Order 40 Rule 2(1) and 2(2) of the Civil Procedure Rules.
3. The application is premised upon the grounds set out in the application and the supporting affidavit sworn by the plaintiff’s executive director, Dr. Peggy Oti-Boateng on 20th May 2024. The grounds have been elaborated upon in the written submissions dated 8th July 2024 and 10th February 2025.

Applicant’s case

4. The plaintiff, in partnership with the African Union Development Agency New Partnership for Africa’s Development (AUDA-NEPAD), established the Alliance for Accelerating Excellence for Science in Africa (AESA) to further its objective of nurturing scientific excellence and promoting innovation.



5. Since 2015, the plaintiff has been implementing a scientific programme known as Developing Excellence in Leadership, Training and Science (DELTAS) which it originated. It has partnered with many organizations throughout Africa, which identify and associate it with DELTAS.
6. The plaintiff employed the 2nd defendant as its AESA director in charge of programmes for an initial term of 3 years, later extended by five years. He was entrusted with the plaintiff's secrets, information and records. He also negotiated the terms of grant contracts between the plaintiff and its donors.
7. Upon leaving the plaintiff's employment, the 2nd defendant formed the 1st defendant. The plaintiff completed the implementation of the DELTAS I programme and, while proceeding with DELTAS II, discovered that the defendants had launched DELTAS II as their own original flagship programme.
8. The plaintiff claimed that the 2nd defendant took its records, inventory, assets, and database and is illegally passing off the 1st defendant's programmes under the brand and mark DELTAS. They are also using the mark to solicit research grants from funders and other research partners.
9. The plaintiff asserted that unless restrained by the court, the defendants shall continue passing off and that it risks loss of reputation, loss and damage that cannot be compensated in monetary terms.

Response

10. The defendants opposed the application through the grounds of opposition dated 27th May 2024 and a replying affidavit sworn by the 1st defendant's Chief Operating Officer (COO), Raynold Mduduzi Zondo, on 7th June 2024. They also filed written submissions dated 30th October 2024.
11. The defendants argued that the application offends the doctrine of laches as it has been brought way after the DELTAS programme was terminated, 31st July 2021 and the demand letter of 2nd March 2023. The plaintiff admitted that Wellcome Trust, who developed DELTAS, terminated the grant made to it and transferred the grant to interim hosting arrangements. The plaintiff has no residual rights in the programme. DELTAS is a charitable programme and restraining the defendant from implementing it would adversely affect its creators, developers, funders and beneficiaries.
12. The defendants asserted that the issues raised in the application seek to have the court go into the substratum of the main dispute between parties at interlocutory stage. That the supporting affidavit sworn on 15th May 2024 is fatally defective as it has been sworn before the date of the application, 20th May 2024.
13. The defendants contended that the application is ambiguous and seeks an injunction against the use of DELTAS, yet the plaintiff is neither the proprietor nor the registered user of the mark. That DELTAS I is completely distinct and separate from DELTAS AFRICA II which the 1st defendant implements.
14. The defendants asserted that the plaintiff has not demonstrated which prejudice they stand to suffer if the injunction is not granted. That the plaintiff was informed on 31st April 2021 that the DELTAS programme grant was being terminated and that there is no evidence that they challenged the grants.
15. The defendants claimed that the application is brought in bad faith to impede the defendants from carrying out their lawful charitable activities. That the application is frivolous, vexatious and an abuse of the court process.

Submissions

16. The plaintiff submitted that the doctrine of laches is not applicable because to invoke laches, the opposing party's delay in initiating the lawsuit must be unreasonable and prejudice the defendant.



17. The plaintiff also submitted that that it protested the infringement of the DELTAS programme at the earliest opportunity in its letter of 2/3/2023 when it learnt of the defendants' infringement and asked the defendants to cease infringing the same immediately.
18. The plaintiff argued that the defendants cannot invoke the aid of the equitable doctrine of laches to benefit from their wrongdoing. It highlighted that it could not proceed to court because missing documents handicapped it and deleted computer data, records, and correspondence relating to DELTAS, atrocities blamed on the 2nd defendant and his exiting team now working for the 1st defendant. It also commissioned a data recovery exercise, which took considerable time-the delay, if any, is not unreasonable.
19. The plaintiff argued that the supporting affidavit annexed to the application was validly sworn in line with established practice, and that the defendant's claim of it supporting a non-existent application was unfounded since the dating of the application does not determine its existence.
20. The plaintiff submitted that it has met the thresholds for the grant of an injunction pending the hearing and determination of the suit.
21. The plaintiff relied on:-
 1. East African Industries v Trufoods [1972] EA 420
 2. Giella v Cassman Brown 1973 EA 358
 3. Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR
 4. Mrao v First American Bank of Kenya Limited & 2 Others [2003] eKLR
 5. Halsbury's Laws of England, Third Edition, Volume 21, paragraph 739, page 352
 6. Amir Suleiman vs Amboseli Resort Limited [2004] eKLR
 7. Edward Akong'o Oyugi & 2 others v Attorney General [2019] eKLR
 8. Daniel Kibet Mutai & 9 others v Attorney General [2019] eKLR
 9. Oriental Commercial Bank Limited v Shashikant Chandubhai Patel [2011] eKLR
 10. Geothermal Development Company v Lantech Africa Limited [2022] eKLR (Civil Appeal (Application) No. E230 of 2022)
 11. Republic v Anti-Counterfeit Agency Exparte Caroline Mangala t/a Hair Works Saloon [2019] eKLR
 12. Netresource Limited v Ministry of Education & 3 others (Miscellaneous Application E236 of 2022) [2023] KEHC 2425 (KLR) (Commercial and Tax)
 13. Dinah Bhoke Makini T/A Dr. Mary Riziki v. Wills Wanjala & 2 Others [2005] eKLR
 14. Triclover Industries (K) Limited v Premier Food Industries Limited [2021] eKLR
 15. Lucy Wangui Gachara v Minudi Okemba Lore [2015] eKLR
 16. Volume 24 of Halsbury's Laws of England, 4th Edition, paragraph 856, page 450-451
 17. INN v NK [2020] eKLR



22. The defendants highlighted the principles of the law of passing off, asserting that the plaintiff has not established a prima facie case and the other conditions for the grant of injunctive relief at the interlocutory stage.
23. The defendants faulted the plaintiff for changing its claim from passing off as per the plaint to trademark infringement, in the application for injunction, which is separate and distinct.
24. The defendants submitted that in the plaint, the plaintiff acknowledged Wellcome Trust as the owner of DELTAS. That their proprietary rights in the DELTAS program emanated from a novation by Wellcome Trust to the plaintiff. That the novation made by Wellcome was in fact in respect of the grants and not in respect of the proprietary rights held by Wellcome Trust over the DELTAS Program.
25. The defendants relied on:-
 1. African Academy of Sciences v Science for Africa Foundation & Another [2024] KEHC 11850 (KLR) Ruling 4th October 2024
 2. Geothermal Development Company v Lantech Africa Limited [2022] eKLR (Civil Appeal (Application) No. E230 Of 2022)
 3. Giella v Cassman Brown (1973) EA 358
 4. Reckitt & Colman Products Ltd v Borden Inc [1990] 1 All ER 873 at page 880 paragraph g
 5. David I Bainbridge, Intellectual Property, 6th Edition, page 745

Analysis and Determination

26. The issue for determination is: whether the plaintiff has met the threshold for an injunction to restrain the defendant from using the brand and mark “DELTAS”.
27. The grant of an interim injunction pending the hearing and determination of a suit is dictated by the circumstances of each case looked at within the constitutional right to remedy to avoid prejudice of the right whilst asking the traditional questions in *Giella v Cassman Brown & Co Ltd [supra]*, to wit: -
 1. Whether the plaintiff has established a prima facie case with probability of success;
 2. Whether an irreparable injury that cannot be compensated by damages if the injunction is not granted may result; and
 3. In case of doubt, where the balance of convenience lies.
28. A prima facie case is that which on material presented, a court “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.” *Mrao Ltd v First American Bank of Kenya Ltd & 2 others [supra]*
29. “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.” *Nguruman Limited v Jan Bonde Nielsen & 2 Others [supra]*
30. The plaintiff’s claim against the defendants is for passing off as per the plaint. It asserted that apart from passing off, it claims contractual interference with business relations and interference with employment contracts between the plaintiff and its employees.



31. The plaintiff argued that it has established a prima facie case as it has shown ownership of the mark. According to the plaintiff, evidence adduced confirms that the defendants are infringing its DELTAS programme. The plaintiff also claims that the defendants have expressly admitted in their replying affidavit that they are indeed infringing the mark.
32. The plaintiff claimed that the 2nd defendant was the plaintiff's employee who turned rogue and hijacked its AESA programmes. He resigned from its employment with his team to implement the DELTAS programme at the 1st defendant in competition with it. The plaintiff further claimed that, the defendants have erroneously conflated the plaintiff's intellectual property rights in DELTAS with the role of Wellcome Trust as an erstwhile funder of the DELTAS Programme.
33. The plaintiff contended that Wellcome Trust, as a funder of DELTAS, could not and did not terminate its rights to intellectual property, research undertaken, knowledge gathered, prestige, brand, goodwill, reputation, publication and awareness in the DELTAS programme for nearly ten years.
34. On the other hand, the defendants contended that the novation made by Wellcome Trust was in respect of the grants and not in respect of the proprietary rights held by Wellcome Trust over the DELTAS Program. They faulted the plaintiff for changing its claim against the defendants from passing off to trademark infringement, which are separate and distinct causes of action under intellectual property law.
35. The plaintiff retorted that it has not acknowledged Wellcome Trust as the owner and developer of the "DELTAS" mark. That it has NOT invoked infringement of trademark as a cause of action. That its claim is for passing off against the defendants to protect its unregistered mark. It elaborated on its reputation and goodwill linked to the DELTAS Brand.
36. In the ruling of 4th October 2024, Hon. Mabeya J. observed that:-
 - “ 26. In the present case, there is an allegation that the plaintiff was guilty of material non-disclosure. That it had failed to disclose that its engagement with the donors who allegedly own the program DELTAS had been terminated in 2021. The plaintiff has however strenuously contended that it is the one who owned the program and not the donors. That it had only invited the donors to launch the program.
 27. I note that the issue of who owns the program is hotly disputed. I also note that in its initial filings, the plaintiff did not explain that its engagement with those supporting the program DELTAS had been terminated and that the program DELTAS II had been given to the defendants. The Court must have dealt with the matter as a straight forward issue of infringement of a mark. To that extent, there was material non-disclosure.”
37. The court was clear that the issue of ownership of the mark is hotly contested. It also noted that in its initial filings, the plaintiff did not explain that its engagement with those supporting the program DELTAS had been terminated and that the program DELTAS II had been given to the defendants.
38. Therefore, so far as the ownership of the mark 'DELTAS' remains undetermined by the court, the circumstances of this case, at this stage, will not favour a finding that the plaintiff has shown prima facie; that it is the one enjoying the goodwill, which is one of the key elements of passing off.
39. Accordingly, I find that the plaintiff has not established a prima facie case with a probability of success. The issues raised are substantial, but, appropriate for trial, where the evidence can be tested.



40. Further to the foregoing, the court finds that the plaintiff has not demonstrated that if the injunction is not granted, it will suffer irreparable injury that cannot be compensated by damages. I do not agree with the proposition that its claim for infringement of its DELTAS program is staggering and cannot be quantified. As earlier observed in the ruling of 4th October 2024, the plaintiff's claim is quantified while "the negative effect of the orders that are in force on the people who are supposed to be benefitting from the implementation of the program cannot be quantified."
41. Lastly, in the circumstances of this case, the balance of convenience tilts in refusing the injunction.

Disposal

42. In the upshot, the plaintiff's application dated 20th May 2024 is dismissed. Given the nature of these proceedings, no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025 THROUGH TEAMS ONLINE APPLICATION.

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F. GIKONYO M

JUDGE

In the presence of: -

Dr. Owino for plaintiff

Ms. Ogonyo for Sc. Nyaoga for defendant

CA - Kinyua

