



**Cherangani Hills Limited v Jyoti Structures Limited (Civil Case
E010 of 2024) [2025] KEHC 12939 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL CASE E010 OF 2024
RK LIMO, J
SEPTEMBER 22, 2025**

BETWEEN

CHERANGANI HILLS LIMITED PLAINTIFF

AND

JYOTI STRUCTURES LIMITED RESPONDENT

RULING

1. The plaintiff/applicant herein through a Notice of Motion dated 28/8/24 has moved this court for the following prayers namely;
 - i. Spent
 - ii. Spent
 - iii. That this honourable court be pleased to issue an order of temporary injunction restraining the respondent, their agents, servants, employees and/or all those claiming through them from collecting, moving, driving, towing or dealing in any manner with excavation machine Reg No.KHMA 942E make BACKHOE currently detained in the custody of the applicant and stored at Kitale Police Station pending the hearing and determination of the application herein.
 - iv. That the above prayer (iii) be granted pending the hearing and determination of the suit herein.
 - v. That this honourable court be pleased to issue a preservatory order against the respondent, their agents, servants, employees and/or all those claiming through them from selling, disposing, alienating, wasting, collecting, moving, driving, towing or dealing in any manner with excavation machine Reg No.KHMA 942E Make BACHHOE which is currently detained in the custody of the applicant pending the hearing and determination of this application and the suit.



- vi. That this honourable court be pleased to issue an order directing that excavation machine Reg No.KHMA 942E Make BACHHOE do remain in custody of the applicant pending the hearing and determination of this application and the suit.
 - vii. That Officer Commanding Kitale Police Station be directed and ordered to ensure enforcement and compliance with the orders of this court.
 - viii. That costs be provided for.
2. The applicant has listed the following grounds for the prayers sought namely;
 - a. That the excavation machine Reg No.KHMA 942E Make BACHHOE is duly registered in the name of the respondent.
 - b. That the applicant carried out civil works pursuant to the letter of instructions by the respondent for the sum of Kshs.77,950,850/- out of which the respondent has paid Kshs.20,000,000/- leaving a balance of Kshs.57,950,850/- which remains unpaid to date.
 - c. That as a result of the default the respondent agreed to have the applicant hold lieu over the subject excavator pending the settlement of the outstanding sum.
 - d. That out of abundance of caution the applicant drove the subject excavator to Kitale Police Station where it is held for security reasons and for fear that the respondent may renege on their word as it has been demanding for the release of the subject excavator from the Officer Commanding Station Kitale.
 - e. That the applicant pleads that the subject excavator remains in custody until the respondent meets their contractual obligations by settling the outstanding sum of Kshs.57,950,850/-.
 - f. That if the subject excavator is placed in the hands of the respondent, the applicant is likely to suffer prejudice as it might not recover its dues from the respondent who may remove the subject excavator outside the jurisdiction of this court as the respondent is likely to relocate to India, their County of origin.
 - g. That the applicant prays to be allowed to retain the subject excavator to enable it pursue recovery process.
 - h. That the applicant stands to suffer irreparably if the orders are not granted given the colossal sum owing and outstanding from the respondent.
 3. The applicant through its director Vipul Ratilal Dodhia has supported the above grounds with an affidavit sworn on 28/8/2024.
 4. The deponent avers that the respondent contracted the plaintiff to carry out civil works at the new 220/33 KV Ortum Sub-station. He has exhibited a contract dated 4/4/2016 as exhibit V-R.D.I.
 5. That the applicant diligently and timely delivered the contracted service/works as per the instructions. He has also exhibited copies of progress certificate chart and summary of price schedule for civil works carried out as V.R.D 2(a) and 2(b).
 6. That the applicant raised several invoices for the work done totaling Kshs.77,950,850/- but upon presentation, the respondent only settled Kshs.20,000,000/- (20 Million) leaving a balance of Kshs.57,950,850/- which remains unpaid.



7. That the respondent had agreed to have the subject excavator to be left in the hands of the applicant to hold it in lieu of debt until outstanding sum is paid.
8. That the respondent has reneged on the arrangements and may move the subject excavator out of jurisdiction which could prejudice the applicant.
9. In his written submissions through counsel, the applicant submits that the respondent is in default of payment of contractual sum and it should be allowed to retain the subject excavator as lieu for the outstanding sum.
10. According to the applicant it is necessary to have both injunctive and preservative orders against the respondent to stop it from collecting the subject excavator from Kitale Police Station.
11. The applicant contends that it has demonstrated sufficient cause for the relief of interlocutory injunction as well set out in *Giella v Cassman Brown & Co (1973) E.A.* It submits that he has established a prima facie case because it is not contested that it was instructed through a letter of instructions dated 4/4/2016 to carry out civil works and building services at Ortum Sub-station through contract number KETRACO/PT/010/2012-LOT 1A” valued at Kshs.87,338,823/-.
12. The applicant further submits that after completion of the contracted services it duly invoiced the respondent for the work done but the respondent breached the terms of the agreement by failing to pay and infringing on the applicant’s rights. It relies on the following authorities;-
 - a. *Ripples Ltd v Mucuba* (no citation given).
 - b. *Abdulkadir Sharrif Avdirahim v ECO Bank Kenya Ltd & Anor [2016]eKLR.*
 - c. *Mrao Ltd v First American Bank of Kenya Ltd [2003]KLR.*
13. The applicant contends that it is likely to suffer irreparable harm if the injunctive reliefs sought are not granted because the respondent is likely to exit the jurisdiction of this court. It further claims that the respondent was declared bankrupt and ripe for insolvency vide *State of Bank of India & Others v Jyoti Structures Limited and others (Company Appeal Insolvency) NO.1962 of 2024 & 1A NO.7303, 7304 of 2024* (<https://indiankanoon.org/doc/100212739>).
14. It submits that the balance of convenience tilts in its favour since the respondent cannot keep both the subject excavator and fail to repay the debt.
15. The respondent has opposed this application through a replying affidavit sworn on 18/9/24 by Kidaparambil Sreekumar Menon, a Commercial Officer with the respondent.
16. The respondent denies that the respondent through authorized/recognized officer executed the letter of instructions dated 4/4/2016.
17. It further denies receipt of any invoices and faults the applicant for going with police officers without any court order to take possession of the subject excavator and keeping it illegally at Kitale Police Station.
18. It denies receiving any demand notice or court order for Kshs.57 Million.
19. It further denies that the applicant has any lieu over the respondent’s excavator contending that none has been exhibited here.
20. It contends that the threshold in *Cassman Brown* has not been met and that the applicant took its excavator without colour of right and faults the applicant for coming to court with unclean hands. It



takes the position that having illegally taken possession of its excavator, the applicant cannot come to court to sanitize the illegal process.

21. In its written submissions through learned counsel M/s Wamwayi & Co Advocates, the respondent submits that it has contested the sum owing adding that the sum submitted in this application is Kshs.67,338,838/- which is its view is at variance with the sum pleaded in the plaint.
22. The respondent further submits that it has sought damages for the unlawful seizure of its excavator.
23. It denies receiving invoices listed by the applicant submitting that the invoices exhibited totals to Kshs.49,312,793/- which does not tally with the sum claimed.
24. It submits that the applicant has failed to reach the threshold stipulated in the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973].
25. It relies on the following authorities:-
 - a. *Ngurumani Ltd v Jan Bonde Neilsen & 2 others* (C.A. NO.77 OF 2012 Nairobi).
26. It submits that the letter of contract submitted does not provide for a lieu over its property and relies on the case of *Simon Njumwa Maghanga v Joyce Jeptarus Kagongo T/A Chesaro & Co Advocate* [2014] eKLR where the court held it was improper for an advocate to withhold client's money over legal fees that were yet to be ascertained through taxation process. The respondent uses this analogy in its contention that the applicant cannot exercise a lieu over the subject excavator on the basis of a claim that is yet to be heard and determined.
27. It submits that the applicant's contention that the defendant is bankrupt is not pleaded and cannot be used as guise to take possession of the subject excavator.
28. This court has laid out the applicant's case as well as the respondent. The applicant in this application is seeking an injunctive relief over the subject excavator it claimed it took possession and kept it in custody at Kitale Police Station. That raises two basic issues which are:-
 - i. Whether there was a lieu over the subject property or any other property of the defendant in favour of the plaintiff.
 - ii. If not whether the applicant is entitled to the relief sought.
29. A lieu is defined by Webster Dictionary as a charge or encumbrance upon property for the satisfaction of a debt or other duty that is created by an agreement between the parties to an agreement or by operation of law. In other words a lieu is security, interest or legal right acquired in one's property by a creditor or lieu holder. A lieu will usually prevent a sale of the encumbered property until the underlying obligation to the creditor is satisfied. If for example a person takes a bank facility to buy a car, the bank would usually be granted a lieu over the car so that if the borrower does not repay the loan, the bank would repossess the car because its lieu is registered in the logbook.
30. A lieu can be provided for in an agreement between parties or through the operation of law. Section 40 *Sale of Goods Act* (Cap 40 Laws of Kenya provides as follows:-
 - “(1) Subject to the provisions of this Act, and of any Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—
 - (a) a lien on the goods or right to retain them for the price while he is in possession of them;



- (b) in case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;
- (c) a right of resale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer”.

31. In this instance, the applicant has claimed that it was granted lieu over the subject excavator by the respondent in lieu of the outstanding sum. However, as correctly pointed out by defence counsel, no lieu has been exhibited in this application.
32. Besides that, the applicant has not pleaded that the lieu is created automatically by operation of any law. A lieu can only be implied for example where a creditor registering its interest in a logbook like in a case of a bank or any other creditor registering its interest in a logbook of a vehicle. A claimant can also pinpoint the exact operation of law granting it lieu over a property of a debtor.
33. On the 2nd issue which is whether its entitled to injunctive relief sought, this court finds that while the applicant may have legitimate claim against the respondent and legitimate fears of recovering of its dues, if any, the manner in which it has come to court is wanting. It is wanting because injunctive reliefs sought are available where the ownership of subject property is in dispute. That is what the provisions of Order 40 Rule 1 of the Civil Procedure Rules envisages. Order 40 Rule 1 of Civil Procedure Rules provides:-

- “ 1. Where in any suit it is proved by affidavit or otherwise-
- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree: or
 - b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders”.

The operating phrase used in the above rule is “property in dispute”. The ownership of the subject excavator herein is not in dispute. The subject excavator in itself is not in dispute. What is in dispute going by the pleadings before me is a contested debt owed to the plaintiff/applicant.

34. The plaintiff/applicant has made claims that the defendant/respondent may relocate outside the jurisdiction of this court in order to defeat its claim. While the fears maybe legitimate, the applicant again has failed to move this court for appropriate remedy/relief as provided for under the provisions of Order 39 of the Civil Procedure Rules by seeking for attachment before judgment. So while the fears expressed by the applicant may be real, it has certainly not property moved this court. In other



words the applicant has knocked at the door of justice but the wrong one. In law parties are bound by pleadings so when you knock the wrong door, access to justice may turn out to be a tall order. The injunctive reliefs sought are inapplicable in the circumstances obtaining.

In the premises the application dated 28/8/24 for aforesaid reasons cannot be sustained and is dismissed. Costs shall be in the main suit.

DELIVERED, DATED AND SIGNED AT KITALE THIS 22ND DAY OF SEPTEMBER, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Songole holding brief for Kidiavai for the Plaintiff

Wanyonyi for the Defendant

Duke/Chemosop – Court assistants

