



**Muigai v Muvans Limited t/a Zukabet (Commercial Suit E094 of 2023)
[2025] KEHC 12794 (KLR) (Commercial and Tax) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E094 OF 2023
BM MUSYOKI, J
SEPTEMBER 19, 2025**

BETWEEN

SAMUEL MUNGAI MUGAI PLAINTIFF

AND

MUVANS LIMITED T/A ZUKABET DEFENDANT

JUDGMENT

1. The plaintiff instituted this suit against the defendant vide plaint dated 6th March 2023 praying for the following orders;
 - a. An injunction to restrain the defendant whether by itself, its directors, officers, servants or agents or any of them or otherwise howsoever from doing the following acts or any of them that is to say, using the word ZUKA BET in any context concerning betting, placement of odds or gambling matters generally.
 - b. An injunction restraining the defendant whether by its directors, officers, servants or agents or any of them or otherwise howsoever from using any document which offends against the plaintiff's copyright in its document and forms.
 - c. An order that the defendant do within a period to be fixed by the court change its trading name to exclude the word ZUKA BET.
 - d. There be and its hereby issued an order of permanent injunction to restrain the defendant/or their agents, employees, assigns or any other person acting on their behalf from infringing on or any other way interfering with the plaintiff's Trademark Number 111268 Class 41 (Betting) known as ZUKABET.



- e. An order entitling the plaintiff of all the proceeds illegally collected by the defendant in the accounts of the interested parties.
 - f. An order of mandatory injunction directing the defendant to transfer to the plaintiff its fair share of revenue.
 - g. A declaration that the defendant was in breach of the plaintiff's trademark rights.
 - h. An order to permit the interested parties herein to transfer to the plaintiff their revenue share as the court may direct.
 - i. Interest on (h) above at commercial rates from the date of filing suit.
 - j. Costs of this suit.
 - k. Such other relief that this Honourable court may deem just and fit to grant.
2. The plaintiff claimed to be the proprietor of trademark registered as number 111268 and known as Zuka Bet (hereinafter referred to as 'the trade mark') which the defendant has been using in its betting business without his consent or permission. The trademark was said to have been registered on 28th February 2020 which he allowed the defendant to use until November 2022.
 3. The defendants filed defence in which it claimed that the trademark belonged to it although registered to the plaintiff. The defendant claimed to have facilitated and financed the registration of the trade mark although the same was registered before the incorporation of the defendant. It also claimed that it operated the trademark under sincere belief that the same belonged to it. Together with the defence the defendant mounted a counter with the following prayers;
 - a. A declaration that the defendant is the rightful proprietor of Trademark No.111268 Class 41 otherwise known as Zukabet.
 - b. An order that the plaintiff does deregister the Trademark No.111268 class 41 otherwise known as Zuka Bet.
 - c. An order prohibiting the plaintiff from using and enjoying the proprietary rights of Trademark No.111268 class 41 otherwise known as Zukabet.
 - d. A declaratory order declaring the defendant as the rightful beneficiary of all the proceeds collected under the company, Muvans Limited.
 - e. An order of mandatory injunction entitling the defendant all proceeds collected under the company Muvans Limited as per the shares allocated to each director respectively.
 - f. Costs of the suit.
 - g. Any further relief that the court deems just.
 4. The initial pleadings had Equity Bank Limited, UBA Bank Limited and Safaricom Limited as interested parties. UBA Bank Limited was struck out following application dated 25-04-2023. Nothing has been said about the other interested parties other than mere mention of their names in prayers 'e' and 'h' of the plaint. Nothing was said about them during the hearing or in the parties' submissions.

The plaintiff's evidence

5. During the trial, the plaintiff testified and called one witness. The plaintiff told the court that he was a promoter and director of the defendant until November 2022 when he resigned out of frustrations



- by the other two directors. The defendant was promoted by himself, Anatoliy Kavelanko, and Eunice Wairimu Wangunyo. He was to run the company by providing expertise and licence while Anatoliy was to provide finances. He added that he was the registered owner of the trade mark which was registered before the defendant was incorporated.
6. During the subsistence of his relationship with the defendant, the plaintiff allowed the trademark to be used by the defendant in running of its business. The plaintiff added that he had been using the trademark before the incorporation of the defendant which he stopped after joining the defendant and concentrated on the defendant's business. He alleges that he has suffered inconveniences and damages due to the continued use of the trademark by the defendant despite him having recalled his consent. He avers that he reported the illegal use of the trademark to Kilimani police station vide occurrence book entry number 24/16/02/2023.
 7. The plaintiff added that at some point, they wanted to expand the company but disagreements arose between him and the other two directors and since Anatoliy held the majority shares, he pushed his position making the disagreements irreconcilable upon which he left the company in November 2022. After he left, he informed the defendant and the other directors that he did not wish to have his trademark continue being used but he got no response hence this suit. He added that even after he got temporary injunction from this court on 9-03-2023, the defendant has continued using the trademark through a domain zuke.bet which is still under the defendant.
 8. He claims that the defendant's bank accounts in UBA Bank Limited, Equity Bank and Safaricom have continued receiving funds earned through trading by use of the trademark thereby making profits to his detriment as he does not get any compensation. In addition, he cannot trade using the trademark due to the use of the same by the defendant.
 9. The plaintiff produced certificate of registration of the trademark dated 16-11-2020, the defendant's certificate of incorporation number PVT-5JUQRPZ, a register of beneficial owners dated 21-01-2021, letter dated 17th March 2020 from the registrar of companies, CR1 form for the defendant dated 10-03-2020, defendant's share capital form (CR2) dated 10-03-2020, CR8 form for the defendant dated 10-03-2020, the defendant's KRA PIN, the defendant's statement of nominal capital dated 10-03-2020, bookmakers licence issued to the defendant dated 4-08-2022, a copy of the occurrence book entry number 24/16/02/2023, CR12 for the defendant dated 18-03-2023 and an agreement dated 15-11-2019.
 10. In cross examination, the plaintiff told the court that he signed the agreement dated 15-11-2019 with Highlights Games Limited which provided the betting odds. He claimed that this agreement which was between the said Highlights Games Limited and an entity known as Samip Outlets, was in respect of the use of the trademark. He alleged that he was the proprietor of the said Samip Outlets. He also confirmed that the defendant was registered soon after registration of the trademark.
 11. The plaintiff admitted that Anatoliy was introduced to him by Wairimu's husband and insisted that the money for incorporation of the defendant came from him and not Anatoliy but Anatoliy provided capital after the incorporation. He admitted that there was an agreement between him and the other shareholders but not in writing and that he had allowed the defendant to use the trademark. He maintained that the trademark remained his even as the defendant used it for trading.
 12. The plaintiff denied knowledge of some minutes of the Board of Directors meeting held on 5-01-2023 referred to him by the counsel. He alleged to have come across them when he was served with the defendant's pleadings. He denied having signed documents emanating from or as follow up of that meeting but admitted transferring his shares to one Miriam Okutoi without the consent of the other



- shareholders and stated that he would have transferred his shares to Anatoliy and Wairimu had they agreed.
13. The plaintiff added that he transferred the shares to Miriam because the other shareholders refused to buy him out. He stated that he resigned from the defendant and transferred his shares using documents which must be in the defendant's online account to which he has no access. According to him, Anatoliy put about 10 million into the defendant. He however did not have a licence to prove that he used zukabet to trade in 2019. He stated further that the discussion on betting came up when Anatoliy was in the country in March 2020 and denied that it started in 2019.
 14. He told the court in re-examination that, at the time they signed agreement with Highlights Gaming Limited, the registration process of the trade mark was at an advanced stage. He also stated that the defendant lodged a criminal complaint after he asked it to stop using his trademark where he was summoned just after he had resigned but he has never been charged. He affirmed that, he contributed expertise and the trademark while Anatoly contributed the seed capital.
 15. PW2 was one Joram Obel who told the court that he was in transport business. He alleged to have joined the defendant towards the end of 2021 and left at the end of 2022 where he was working in accounts department. His attempt to produce what he referred to as audited books of accounts was objected to and this court sustained the objection. In cross examination, he admitted that he had not produced anything to show that he worked with the defendant.

The defendant's case

16. The defendant called only one witness by the name Dr. Anatoliy Kovalenko who told the court that he was its director. He stated that the plaintiff was engaged to be a promoter for the defendant and to undertake the registration of the trademark. He stated that one Samuel Njiru who was a customer of the plaintiff informed him of an opportunity to invest in a betting company and upon engagement, the defendant was incorporated on 17th March 2020 where it commenced operations as a betting company. At incorporation, the defendant's director was the plaintiff while Eunice Wairimu Wangunyo and him were only shareholders. The latter two were later brought in as directors of the company.
17. The witness added that while the process of incorporation of the defendant was ongoing, he facilitated registration of the trademark by providing regular funds needed for its registration in Kenya. His expectation at that time was that the trademark would be registered to the defendant but the plaintiff went behind his back and had the same registered to him. He claimed that the plaintiff took advantage of him being a Ukrainian and his absence to register the trademark in his favour. According to the witness, this came to light after he and Eunice gave power of attorney to their lawyer one Kimanthi Musyoki in running of the defendant. They also discovered that the plaintiff had changed the defendant's email address, changed two of its shops and the declared bank accounts had no money.
18. Following the above revelation which the plaintiff was not ready to discuss or settle, the witness reported a complaint to the police on 28-11-2022 and investigations revealed that the plaintiff was operating business ultra vires the defendant and selling part of the shops belonging to the defendant. The investigations also revealed that another bank account which the other directors were not aware of. The plaintiff went on and resigned as a director and shareholder of the defendant on 5th January 2023 pursuant to a unanimous resolution. Since the discussion with the plaintiff was unsuccessful, the software of the defendant was shut down as a result of which the defendant has been incurring financial loss and instability.
19. The witness produced the trademark's registration certificate, a copy of the defendant's CR12 forms dated 18-03-2021 and 9-02-2023, a copy of application forms to Safaricom dated 22-08-2022 and



12-04-2021, a copy of DCI referral forms dated 26-11-2022 and a copy of minutes for meeting held on 5-01-2023.

20. According to Anatoliy, the plaintiff's role was setting up a website and carrying out administrative functions of the defendant. The witness added that on January 2020, they held discussions and came up with zukabet as the name of the trademark and he gave the money for the incorporation of the company and registration of the trademark. He said that he gave the money to Sammy Njiru.
21. The witness purported that the plaintiff did not know how to register a trade mark. He added that, he got stranded in Ukraine due to breakout of the Corona virus but managed to be in Kenya in October 2022 when he tried to conduct the plaintiff in vain. All the while, the defendant was reporting losses. When they managed to get into the defendant's office, they found it empty with documents missing and added that the bank accounts had been cleared by the plaintiff. The witness added that the investigations by the police are still going on.
22. The witness alleged that it had not been agreed that the plaintiff should become a director of the defendant and that came to him as a surprise. He also denied knowing Miriam Okutoi to whom the plaintiff transferred shares and stated that, that was one of the issues under investigations. He also denied attending a meeting of 5-01-2023. He also denied knowledge of the minutes generated from the said meeting and maintained that the same came to his knowledge from his lawyer.
23. In cross-examination, the witness stated that he was a lecturer in law in Kiev International University and he knew the process of registration of trademarks which is an international issue. He added that the trademark was only registered in Kenya and not elsewhere. He confirmed that the registration certificate showed that the plaintiff was the proprietor of the trademark. He admitted that though he gave about 500 US dollars in cash to Samuel Njiru when he was in Kenya, he had no evidence to that effect. He also admitted that there was no assignment of the trademark to the defendant. He also stated that, he did not object to registration of the trademark and pointed out that neither him nor Eunice Wairimu Wangunyo signed the minutes of 5-01-2023.
24. In re-examination, the witness stated that he owned 50 per cent of the defendant and that they acted on trust and that was why he did not have documents. He wondered how the plaintiff who was reporting loses would now demand share of profits from the defendant. He alleged that the trademark would not have made money without his network.

Analysis and determination.

25. I have read the evidence of the parties including the exhibits. I have also read submissions of the plaintiff dated 15-04-2025 and those of the defendant dated 15-05-2025. I note therefrom that there is no dispute that the trademark was registered to the plaintiff and that the plaintiff resigned from the defendant sometimes between November 2022 and January 2023.
26. A trademark is an intellectual property and as such, it falls under the constitutional definition 'property' under Article 260 of the *Constitution* which states that;
 - a. "property" includes any vested or contingent right to, or interest in or arising from-
 - a. land, or permanent fixtures on, or improvements to, land;
 - b. goods or personal property;
 - c. intellectual property;



d. money, choses in action or negotiable instruments.

27. Once the trademark is registered it remains the property of the registered proprietor. The registered proprietor has a right to deal with the trademark as they may wish subject to the law. That includes transfer, assignment or surrender. Article 40(5) of the Constitution gives the place of intellectual property by making provision for its protection by stating that;

The State shall support, promote and protect the intellectual property rights of the people of Kenya.’

28. Being property protected under the Constitution, a trademark cannot be taken away or appropriated to another person without the consent, permission or licence of the registered proprietor. In *Republic v Minister for Trade & 4 others Ex-parte Durran Sounds Investments Company Limited & another* (2011) KEHC 225 (KLR) the Court held that;

Intellectual property in this context is a property of the owner of the Trademark. It is protected as a fundamental right under the Constitution of Kenya 2010.’

29. It is trite that a limited liability company is a separate entity from its directors or shareholders and cannot act or own property before it comes to live through registration. Promoters of a company are just initiators and once it is incorporated, they cannot claim to have any right to appropriate to the company what they did not own. The company becomes independent and separate from the promoters once it is incorporated.

30. In the matter before me, the trademark was registered to the plaintiff on 28-02-2020 whereas the defendant came into live on 10-03-2020 which obviously means that the defendant had no capacity to own the trademark before 10-03-2020. The defendant has sought to deal with this issue by citing Section 32(1) of the Trade Marks Act which states as follows;

No application for the registration of a trade mark in respect of any goods or services to be performed shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark if-

- a. the court or the Registrar is satisfied that a body corporate is about to be constituted, and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods or services to be performed by the corporation; or
- b. the application is accompanied by an application for the registration of a person as a licensee of the trade mark, and the court or the Registrar is satisfied that the proprietor intends it to be used by that person in relation to those goods or services to be performed and the court or the Registrar is also satisfied that that person will be registered as a licensee thereof immediately after the registration of the trade mark.’

31. In my view, the above provision does not in anyway confer the proprietorship rights of a trademark to an unregistered entity. All that it seeks to cure is an eventuality where the promoters of a company would intend to secure use and ownership of the trademark as the registration of the intended body corporate is in the process. The Section is clear that it promotes registration of trademarks for the benefit or use by a body yet to be registered where there is evidence that the person applying for



registration intends to assign the trademark to the said body. In the case before me, there is no evidence that the plaintiff was applying for registration of the trade mark with intention of assigning it to the defendant. It has not been shown that the defendant made any efforts to follow up the assignment of the trademark.

32. It is claimed that the defendant financed registration of the trademark which entitles it to ownership of the same. However, there is no evidence of who financed or paid the expenses and the costs of the registration process. The defendant's witness claims to have given the money to one Sammy Njiru in cash. The defendant did not call the said Sammy Njiru to corroborate that testimony. Eunice Wairimu Wangunyo who is claimed to have been wife to the recipient of the money and a shareholder of the defendant, though listed as a witness did not testify. There being no evidence to the financing of the registration of the trademark, this court has no basis upon which it can decide in favour of the defendant or Antoliy on this issue. It remains the defendant's word against the plaintiff's and this being a court of law, it can only make decisions based on evidence and the law.
33. The evidence produced in court show that the plaintiff is the registered proprietor of the trademark. He has chosen to withdraw his support for continued use of the trademark. The book makers license produced in court which was issued by the Betting Control and Licensing Board expired in 30th June 2023 and there is no evidence that it was renewed or a new one was issued. The same was issued on 4th August 2022 when the parties were ostensibly in good relations. Now that they have disagreed, the proprietor of the trademark has no obligation and cannot be forced to assign or give consent to its use in a specific way unless there is proof of a contract between the parties. In any event, proprietorship of a trademark is not conferred by issuance of a trading license.
34. The defendant has pleaded that the plaintiff should be estopped from denying that the trademark belonged to it. The doctrine of promissory estoppel operates where a party has through promises or conduct led another to believe that a particular state of affairs exists. In this case, I am not able to see any promises made to the defendant by the plaintiff. The fact that the bookmakers license was issued to the defendant for the period running up to 30th June 2023 does not alone amount to an enforceable promise. None of the parties has told the court the circumstances under which the license was issued. In that case, the court has no way of ascertaining the kind of promise made to the defendant and under what terms.
35. The defendant alleges that it had what it refers to as reasonable expectation that the plaintiff would assign the trademark to it and urges the court to make assumption of that exaptation and enforce it. I do not see any circumstances which would have led the defendant to have such an expectation and even if there were, the position in law is that legitimate or reasonable expectation cannot override the law. It cannot operate where the law is expressly clear on the rights of the parties. In *Republic v Nairobi City County & another Ex-parte Wainaina Kigathi Mungai* (2014) KEHC 4095 (KLR) the court held that;

However, the legal position is that legitimate expectation cannot override the law.'
36. In view of the above discussion, it is the finding of this court that the plaintiff deserves injunction and ancillary orders.
37. The plaintiff has claimed for accounts, share of profits and interest. In my view, the plaintiff has not laid reasonable basis for the court to order accounts. He resigned from the defendant in November 2022 until which time he was in charge of administration. Actually, the accounts he attempted to produced were for the period he was in charge of the defendant.
38. The plaintiff has claimed that the defendant has been using the trademark even after the court issued interlocutory orders of injunction. I have gone through the court's record and I have not seen any



evidence of such claim. The plaintiff did not file or prosecute an application for contempt of the court orders. He did not produce an iota of evidence showing that the defendant has been using the trademark. In the circumstances, I find the prayers for accounts and share of revenue unsupported and they are declined.

39. There is a prayer for declaration that the defendant has breached the plaintiff's trademark rights. As observed above, the plaintiff was in charge of administration and management of the defendant until he resigned in November 2022. The license issued for trading using the trademark was issued on 4-08-2022 when the plaintiff was in charge. The plaintiff in his testimony told the court that he withdrew his consent after he disagreed with the other directors. It is clear to me that the use of the trademark at the time was with the consent of the plaintiff and there can therefore be no violation of the rights unless the same came after this court had issued interim orders which has not been proved. That prayer is therefore declined.
40. On the counterclaim, the defendant pleads that the plaintiff acted ultra vires the defendant. It has however not told the court which and how the plaintiff's acts were ultra vires except that he did not assign the trademark to it. The defendant has not produced any evidence to show that it demanded assignment of the trademark and as stated elsewhere in this judgment, there is nothing to show that the defendant had a hand in registration or acquisition of the trademark. The claim that the trademark was fraudulent registered to the plaintiff instead of the defendant does not therefore hold water. The trademark could not have been registered in the name of the defendant before it was incorporated as unincorporated body has no capacity to own property.
41. The defendant has also claimed that the plaintiff transferred its funds to third parties and took away its property. There is no list, inventory, register or any document to show what the defendant owned at any given time and what the plaintiff took away leave alone any evidence to that effect. The same goes for the defendant's claim that the plaintiff forged and illegally used its documents.
42. In my view of what I have stated above, it is my finding that the plaintiff has partly proved his case on a balance of probabilities to the extent discussed while the defendant has failed to prove its counterclaim.
43. On issue of costs, I am convinced that this is a case which calls for each party to bear their own costs. The plaintiff had acquiesced to the use of the trademark by the defendant until they disagreed. He has not produced any letter written to the defendant demanding that it stops using the trademark neither has he demonstrated any pre-court action steps he took to claim exclusive use of his trademark. There is nothing to show that after the expiry of the license which the plaintiff oversaw issuance, the defendant went for a new license or continued using the trademark despite his protests. Although the defendant's counterclaim fails, I find it intertwined and inseparable from the main suit as the circumstances surrounding it emanates from the same sequence of events and it is only fair and just that the orders on costs abide the same as in the main suit.
44. Consequently, judgement is entered in the following terms;
 1. The defendant is hereby restrained whether by itself, its directors, officers, servants or agents or any of them or otherwise howsoever from doing the following acts or any of them that is to say, using the word Zukabet registered as trademark number 111268 in any context concerning betting, placement of odds or gambling matters generally.
 2. An order of permanent injunction is hereby issued restraining the defendant whether by its directors, officers, servants or agents or any of them or otherwise howsoever from using any document which offends the plaintiff's copyright in respect of trademark registered as number 111268 Class 41 and known as Zukabet.



3. The defendant is hereby ordered to within a period of ninety days from the date of this judgment change its trading name to exclude the word ZUKABET.
4. There be and its hereby issued an order of permanent injunction restraining the defendant/or their agents, employees, assigns or any other person acting on their behalf from infringing on or in any other way interfering with the plaintiff's trademark number 111268 Class 41 (Betting) known as ZUKABET.
5. The counter claim is dismissed.
6. There shall be no orders as to costs in the main suit and the counterclaim.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Wambugu for the plaintiff and Mr. Kamunda for the defendant.

