



**Greenline Images Limited & 2 others v Kabarak University Teaching, Research
and Referral Hospital & 2 others (Commercial Civil Case E021 of 2022)
[2024] KEHC 11941 (KLR) (Commercial and Tax) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11941 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL CASE E021 OF 2022**

JWW MONG'ARE, J

OCTOBER 4, 2024

BETWEEN

**GREENLINE IMAGES LIMITED 1ST PLAINTIFF
RACHAKY CONSTRUCTION LIMITED 2ND PLAINTIFF
VICHA ENTERPRISES LIMITED 3RD PLAINTIFF**

AND

**KABARAK UNIVERSITY TEACHING, RESEARCH AND REFERRAL
HOSPITAL 1ST DEFENDANT
SWAHILI HILL DEVELOPMENT LIMITED 2ND DEFENDANT
EASTGATE INTERNATIONAL LIMITED 3RD DEFENDANT**

RULING

1. On 26th January 2022, the Plaintiffs filed suit against the Defendants seeking inter alia an order of specific performance compelling them to honour the terms of the construction agreements entered into between the 1st and 2nd Plaintiffs and the 2nd and 3rd Defendants by paying the Plaintiffs their dues, that is; Kshs. 11, 862,090.00 to the 1st Plaintiff and Kshs. 35,208,852.00/= to the 2nd and 3rd Plaintiffs.
2. On 29th March 2022, the Plaintiffs and the 2nd and 3rd Defendants entered into a consent that was adopted as an order of the court as follows("the Consent"):
 1. That the 2nd and 3rd Defendants do pay the Plaintiffs Kshs. 34,860,942/= in full as final settlement of this matter.
 2. That the amount of Kshs. 34,860,942 be paid in instalments as follows:



- a. Kshs. 4,500,000/= on or before 1/4/2022.
 - b. The balance of Kshs. 30,360,942/= be paid on or before 30/4/2022.
3. That costs of the suit to the Plaintiff to be agreed or taxed.
3. The 1st Defendant has now approached the court with the Notice of Motion dated 25th January 2024 under section 1A, 1B & 3A of the Civil Procedure Act (Chapter 21 Laws of Kenya), Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules 2010, seeking the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. The Honourable court be pleased to issue an injunction to permanently restrain the Decree Holders, their agents and or servants from further attempts to execute against Kabarak University or the Applicant;
 6. The Honourable Court be pleased to issue an injunction to permanently restrain Beta Base Auctioneers, its servants or agents from purporting to attach and /or sell by public auction or otherwise of Kabarak University or the Applicant's property; and
 7. Costs of this suit be provided for.
4. The application is grounded by the facts set out on its face and the supporting affidavit of the 1st Defendant's director, PHilemon Kimutai Kaino, sworn on 25th January 2024. It is opposed by the Plaintiffs through the Grounds of Opposition dated 23rd February 2024. The parties were directed to file written submissions but only the 1st Defendant has filed the same.
5. The 1st Defendant's case is that on 18th January 2024, the Plaintiffs, as the decree holders, through Beta Base Auctioneers brought a standstill to learning in Kabarak University by causing commotion in the main campus and harassing the various staff members including the Vice Chancellor in the name of satisfying a decretal sum of Kshs. 30,863,942.00/= pursuant to a Warrant of Attachment dated 19th December 2023. That the turn of events on the material day caused embarrassment to the Vice Chancellor of the institution with mixed reactions from the students creating concerns on their security and even credibility of their institution judging from the manner that the Vice Chancellor was handled.
6. The 1st Defendant contends that the purported execution is targeted against Kabarak University, a learning institution that is not party to the contract that led to the Consent nor these execution proceedings and is distinct and separate from the 1st Defendant herein. That the Plaintiffs' actions were against the Consent which was between the 2nd and 3rd Defendants and the Plaintiffs and the 1st Defendant claims that the Plaintiffs instructed the Auctioneers to cause havoc in the University despite their knowledge that the University is not a party to the suit. That their previous attempt to include the University into these proceedings by instituting garnishee proceedings targeting the University's Bank accounts was quashed by the Court.
7. The 1st Defendant reiterates that the Consent Order did not include Kabarak University or even the 1st Defendant as parties responsible for the settlement of the decretal sum and that there exists no basis whatsoever for targeting Kabarak University other than "malice, witch-hunt, bravado and



intimidation tactics that are devoid of legal, factual or even logical backing”. It further avers that the Plaintiffs have also misled Court on the Decretal amount that is due and owing since the current balance is Kshs. 15,777,000.00/= as acknowledged by the Plaintiffs’ advocate and not the fictitious Kshs. 30,863,942.00/= and that the Judgment Debtors have consistently paid the Decree Holders in honouring their payment plan.

8. The 1st Defendant states that if the Court does not act in stopping this illegality, the learning and peaceful existence characteristic of any learning institution will be greatly compromised and diminished by these provocative acts of the Plaintiffs. That unless the Court issues an injunction, the Plaintiffs through their Auctioneers present a constant threat to learning at Kabarak University and potentially wrongfully attaching the institution’s property on a suit that the institution is not a party. As such, it contends that it is in the interest of justice and fairness that the Plaintiffs be restrained from further harassing staff and officers in the University in a veiled attempt to execute against improper parties and that it is of utmost importance that the orders sought in the application be granted to meet the ends of justice and that the Plaintiffs do not stand to suffer any damage.
9. In response, the Plaintiffs state that the application as drawn and filed is fatally defective, that the 1st Defendant has not demonstrated or shown evidence of the said Kabarak University being proclaimed and or attached and that the warrants annexed to the application are for the judgment debtors in the suit. That the 1st Defendant’s deponent has misled the court by indicating that he is its director as the 1st Defendant is a society and not a limited company and that the alleged grounds set out in the application are otherwise an abuse of the court process and the same are not bona fide. They state that the application has no chances of success at all.

Analysis and Determination

10. I have carefully considered the application and the response thereto together with the 1st Defendant’s submissions. To my mind, the main issue that arises for the court’s determination is “whether the court should issue the injunctive orders sought by the 1st Defendant.” As submitted by the Plaintiffs, the principles upon which the court is required to apply in determining whether to grant an injunction were fortified in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR, where the Court of Appeal reiterated the settled principles in *Giella v Cassman Brown* [1973] EA 358 as follows:

“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”.

11. As to what constituted a prima facie case, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR explained that 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 to call for an explanation or rebuttal from the latter.” Therefore, in the case before this court, the 1st Defendant must demonstrate that it has a right to the alleged proclaimed property and that this right is likely to be violated by the Plaintiffs’ actions.
12. As stated, the Consent was between the Plaintiffs and the 2nd and 3rd Defendants and therefore, execution could only be against the said parties and not the 1st Defendant. However, the warrants of attachment annexed by the 1st Defendant indicate that the same is also against it which, in my view, is not supposed to be the case as there is no judgment against the 1st Defendant. I am satisfied that the 1st Defendant has established a prima facie case that its property is about to be attached and yet there is no judgment against it, which is a violation of its property rights.
 13. In respect of Kabarak University, I note that the 1st Defendant has deponed that itself and the University are separate and distinct entities. As such, the University has capacity of filing its own suits or claims. The 1st Defendant has not explained why it is seeking an injunction on behalf of an entity that can file the claim itself and if anything, the said University is not listed in the warrants of attachment. I therefore find that the 1st Defendant has no locus standi to bring these proceedings on behalf of Kabarak University and as such, no injunction can be available to the University.
 14. Having found that the 1st Defendant has demonstrated a prima facie case, I now move to determine whether the irreparable damage would be caused against the 1st Defendant and whether the balance of inconvenience tilts in favour of granting the injunction in line with the dicta in *Nguruman Limited*(supra). I find in the affirmative on both issues as I agree with the 1st Defendant that the reputational and credibility damage that can be caused to it from the intended execution would be irreversible and difficult to quantify even in damages. I also find that the balance of convenience tilts in favour of granting the injunction as the 1st Defendant is not a judgment debtor to the Consent and that it has a good defence against Plaintiffs which is likely to be ventilated at trial. Thus, it would only be convenient that the injunction be issued until the dispute between the Plaintiffs and the 1st Defendant is determined.

Conclusion and Disposition

15. For these reasons, I find that the Plaintiff’s application dated 25th January 2024 is merited and the same is hereby allowed with the court issuing the following orders:
 1. An order of an injunction be and is hereby issued restraining the Decree Holders, their agents and or servants from further attempts to execute against the 1st Defendant, Kabarak University Teaching, Research And Referral Hospital
 2. An order of an injunction be and is hereby issued permanently restraining Beta Base Auctioneers, its servants or agents from purporting to attach and /or sell by public auction or otherwise of Kabarak University Teaching, Research And Referral Hospital and;
 3. The 1st Defendant, Kabarak University Teaching, Research And Referral Hospital is awarded costs of this application which shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF OCTOBER 2024

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J.W.W. MONG’ARE

JUDGE



In the Presence of:-

Mr. Okore Jayalo for the Applicant.

Ms. Muranguri holding brief for Ms. Mutua for the 2nd & 3rd Respondents.

N/A for the Decree Holder.

Amos - Court Assistant

