



**Registered Trustees of the Agricultural Society of Kenya v Nairobi Polo Club (Environment and Land Miscellaneous Case E256 of 2024) [2025] KEELC 4973 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4973 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E256 OF 2024**

**TW MURIGI, J  
JUNE 20, 2025**

**BETWEEN**

**THE REGISTERED TRUSTEES OF THE AGRICULTURAL SOCIETY OF  
KENYA ..... APPLICANT**

**AND**

**NAIROBI POLO CLUB ..... RESPONDENT**

**RULING**

1. Before me for determination is the Notice of Motion dated 15<sup>th</sup> November 2024 in which the Applicant seeks the following orders:-
  - i. Spent.
  - ii. Spent.
  - iii. Spent.
  - iv. That pending the hearing and determination of the arbitration, an injunction do issue restraining the Respondent from any unauthorised use of Pitch A for purposes other than sporting activities and prohibiting the use of the grounds for any commercial events, including concerts or roadshows, in violation of the Licence Agreement.
  - v. That the pending hearing and determination of the arbitration, an injunction do issue restraining the Respondent, its agents, servants or any other person from organising, hosting or facilitating any events at the Nairobi Polo Club grounds specifically Pitch A other than the authorized sporting activities.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Caren Jaguga sworn on even date.



### **The Applicant's Case**

3. The Deponent averred that the Applicant and Respondent entered into a Licence Agreement commencing 1<sup>st</sup> January 2021 in respect of the premises located at the ASK showground in Nairobi.
4. She averred that pursuant to Clause 4 of the Agreement, the Respondent was only permitted to use the premises as a sporting ground. She went on to state that Clause 6 of the Agreement prohibited the Defendant from subletting or transferring the premises to a third party while Clause 15 prohibited the Respondent from conducting any concerts or road shows on the licensed premises.
5. That in contravention of Clause 4 of the agreement, the Respondent has organized and continues to plan music concerts, social gatherings and road shows on Pitch A. She contended that by organizing events involving attendees and third party sponsors is tantamount to subletting or assigning the space in breach of Clause 6 and 16 of the Licence.
6. The deponent contends that the Applicant will suffer irreparable harm if the orders sought are not granted.
7. She further contended that the Applicant has commenced arbitration proceedings in accordance with the arbitration clause contained in the Agreement.
8. In conclusion, the deponent urged the Court to allow the application as prayed to prevent.

### **The Respondent's Case**

9. The Respondent opposed the application through a replying affidavit sworn by Susan Wanjiku Maina.
10. The deponent averred that the club has been organising several sporting activities and entertainment events at Pitch A in accordance with the Licence Agreement and without any interference to the Respondent and any 3<sup>rd</sup> Party whatsoever.
11. She further averred that the club has at all times informed the Applicant of its calendar of events for all the months including December 2024 and the relevant period of the License Agreement.
12. According to the deponent, the ex parte orders were obtained through concealment of material facts including the fact that the club had been running similar events and programs for years with the approval and knowledge of the Applicant.
13. That in a show of bad faith, the Applicant violated the orders in the month of December by unilaterally locking up the club rendering the Respondent unable to carry out their sporting events as directed by the court and as contained in the License Agreement.
14. She denied the alleged breaches of the License Agreement and added that the club has been carrying out ordinary activities for years without any complaint. From the foregoing, the deponent contends that the application is brought in bad faith and should be dismissed with costs.
15. The application was canvassed by way of written submissions

### **The Applicant's Submissions**

16. The Applicant filed its submissions dated 24<sup>th</sup> March 2025. On behalf of the Applicant, Counsel submitted that the issue for determination is whether the Applicant is entitled to an interim measure of protection pending the hearing and determination of the arbitral proceedings.



17. Counsel relied on Section 7 of the *Arbitration Act* and on the cases of *Safaricom Limited versus Ocean View Beach Hotel Limited & 2 others*; Civil Application No. 327 of 2009 *Carzan Flowers (Kenya) Limited & others versus Tarsal Koos Minck B V & others* Milimani HCCC No. 514 of 2009 to submit that the Applicant is entitled to an interim measure of protection pending the hearing and determination of the arbitral proceedings.
18. Counsel further submitted that for an order of interim measure of protection to be granted, the Applicant must prove that: -
  - a) There is an arbitration clause in the agreement between the parties.
  - b) That it will suffer irreparable damage or loss.
  - c) That the balance of convenience tilts in its favour.
19. On the first condition, Counsel submitted that the agreement between the parties herein contains an arbitration clause under clause 21. Counsel further submitted that arising from the Respondents actions, a dispute has arisen between the parties which should be referred to arbitration for determination in accordance with Clause 21 of the License Agreement.
20. With regards to the second condition, Counsel submitted that the Applicant will suffer irreparable loss if an interim measure of protection is not granted. It was submitted that hosting the activities on the suit property will attract massive crowds who will damage the indigenous flora, degrade the pitches used for sporting activities and cause noise pollution. Counsel submitted that the damage cannot be compensated adequately by an award of damages.
21. On the third condition, Counsel submitted that the balance of convenience tilts in favour of the Applicant.
22. In conclusion, Counsel submitted that the Applicant has met the threshold for the grant of the orders sought.

### **The Respondent's Submissions**

23. The Respondent filed its submissions dated 30<sup>th</sup> January 2025. On behalf of the Respondent, Counsel outlined the following issues for the court's determination: -
  - a) Whether the Applicant has demonstrated a prima facie case?
  - b) Whether the Applicant will suffer irreparable loss if the orders sought are not granted?
24. On the first issue, Counsel submitted that the Applicant has not met the threshold for the grant of an injunction set out in the case of *Giella versus Cassman Brown & Company Ltd* EA 358.
25. Counsel submitted that the Applicant had made unsubstantiated claims that the actions of the Respondent will cause harm that cannot be compensated by an award of damages. Counsel further submitted that the annexures attached to its replying affidavit show that the Respondent has not held any events on the suit premises. From the foregoing, Counsel submitted that the Applicant has not demonstrated a prima facie case with a probability of success.
26. With regards to the second issue, Counsel submitted that the activities complained of are not out of the ordinary as they had been previously held on the suit property. Counsel further submitted that the Applicant has not proved that it will suffer any loss that cannot be compensated by an award in damages.



27. On the third issue, Counsel submitted that the balance of convenience tilts in favour of the Respondent as it holds a valid License Agreement and is likely to suffer loss if the orders sought are granted. Counsel contended that the dispute ought to be determined by arbitration in accordance with clause 21 of the license agreement. Counsel opined that the Applicant would not suffer any loss if the orders sought are not granted.
28. In conclusion, Counsel urged the court to dismiss the application with costs to the Respondent.

### **Analysis And Determination**

29. Having considered the application, the respective affidavits and the rival submissions, the issue that arises for determination is whether the Applicant is entitled to an interim measure of protection pending the hearing and determination of the arbitral proceedings.
30. The *Black's Law Dictionary* 8<sup>th</sup> Edition defines interim measure of protection as follows:-
- “An international tribunal order to prevent a litigant from prejudicing the final outcome of a law suit by arbitrating action before judgment has been reached.. This measure is comparable to a temporary injunction in national law.”
31. Section 7 of the *Arbitration Act* provides as follows:
- “(1) It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.
- (2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.”
32. In the case of *Safaricom Limited v Ocien View Beach & 2 others* 2010 eKLR the court set out the conditions to be met before an interim measure of protections is granted as follows;-
1. The existence of an arbitration agreement.
  2. Whether the subject matter of arbitration is under threat.
  3. In the special circumstances which is the appropriate measure of protection after an assessment of the merits of the application.
  4. For what period must the measure be given especially if requested before the commencement of the arbitration so as to avoid encroaching on the tribunal's decision
33. The grant of an interim measure of protection is discretionary. The purpose of an order of protection is to preserve assets or in some way to maintain the status quo pending the outcome of the arbitral proceedings
34. In the matter at hand, it is not in dispute that there exists a License Agreement between the parties herein which provides for an arbitration clause. From the evidence presented by the parties, it is crystal that a dispute has arisen between the parties herein. The Applicant is seeking for an injunction to restrain the Respondent from carrying out any activity other than the sporting activities pending the hearing and determination of the dispute by arbitration. Having perused the material on record this



court finds that the Applicant has demonstrated that the suit property is under threat of degradation. From the evidence presented by the parties this court finds and holds that the balance of convenience tilts in favour of maintaining the status quo pending the hearing and determination of the arbitral proceedings.

35. The upshot of the foregoing is that the application dated 15<sup>th</sup> November 2024 is merited and the same is hereby allowed in the following terms:-
- i. ThatT pending the hearing and determination of the arbitration, an injunction be and is hereby issued restraining the Respondent from any unauthorised use of Pitch A for purposes other than sporting activities and prohibiting the use of the grounds for any commercial events, including concerts or roadshows, in violation of the Licence Agreement;
  - ii. ThatT pending hearing and determination of the arbitration, an injunction be and is hereby issued restraining the Respondent, its agents, servants or any other person from organising, hosting or facilitating any events at the Nairobi Polo Club grounds specifically Pitch A other than the authorized sporting activities.
  - iii. Each party to bear its own costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF JUNE 2025.**

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**HON. T. MURIGI**

**JUDGE**

In The Presence Of: -

Court assistant – Ahmed

Muuu holding brief for Ligamie for the Applicant

