



**Abdu v Elmi & 4 others (Commercial Case E460 of 2024)  
[2025] KEHC 14527 (KLR) (Commercial and Tax) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E460 OF 2024  
MN MWANGI, J  
OCTOBER 3, 2025**

**BETWEEN**

**OLAD ABDIHALIQ ABDU ..... PLAINTIFF**

**AND**

**MOHAMED HASSAN ELM I ..... 1<sup>ST</sup> DEFENDANT**

**ABDULLAHI ALI ..... 2<sup>ND</sup> DEFENDANT**

**ABDALLAH MOHAMMED AHMED ..... 3<sup>RD</sup> DEFENDANT**

**MAALIN GROUP ..... 4<sup>TH</sup> DEFENDANT**

**ISHMAEL NYARIBO T/A I.N. NYARIBO & CO. ADVOCATES ... 5<sup>TH</sup>  
DEFENDANT**

**RULING**

1. This Ruling is with respect to two applications. The first application is the plaintiff's Notice of Motion dated 12<sup>th</sup> August 2024 filed pursuant to the provisions of Sections 1A, 1B & 3A of the [Civil Procedure Act](#), Order 40 Rule 1 & Order 51 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The plaintiff prays for an order of temporary injunction restraining the 5<sup>th</sup> defendant or anyone acting for him from releasing Title documents to the 1<sup>st</sup> defendant or their agents pending the hearing and determination of this suit.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Olad Abdihaliq Abdu, the plaintiff herein. He averred that he invested USD 700,000.00 in the 4<sup>th</sup> defendant in 2019 based on assurances from its Director, the 1<sup>st</sup> defendant, who was actively managing the 4<sup>th</sup> defendant company with his co-directors being the 2<sup>nd</sup> & 3<sup>rd</sup> defendants, but the business failed and the 1<sup>st</sup> defendant swore an affidavit on 19<sup>th</sup> March 2020,



- acknowledging receipt of the funds, promising to refund the same within two years and transfer to him properties of an equivalent value. Mr. Abdu asserted that to further safeguard his interests, he had the aforesaid affidavit duly notarized and endorsed by the Embassy of the Federal Republic of Somalia as he and the 1<sup>st</sup> defendant had other businesses within the said country at the time, and it was verified by the Ministry of Foreign & Diaspora affairs.
3. Mr. Abdu stated that on 8<sup>th</sup> December 2020, a Restructuring Memorandum was entered into, providing for loss assessment and investor compensation. Additionally, that Title documents belonging to the 1<sup>st</sup> defendant were deposited with the 5<sup>th</sup> defendant as security, but despite the said Memorandum, the 1<sup>st</sup> & 2<sup>nd</sup> defendants collected some of the documents in 2021 and 2022, and in 2023. He averred that the 1<sup>st</sup> defendant attempted to collect more documents, prompting disputes and failed negotiations. Mr. Abdu contended that he lodged a police complaint in January 2024 and sought Court intervention to prevent the release of the documents, but an earlier suit was dismissed for want of jurisdiction.
  4. In opposition to the application, the 1<sup>st</sup> defendant filed a replying affidavit sworn on 23<sup>rd</sup> August 2024 by Mr. Mohamed Hassan Elmi, the 1<sup>st</sup> defendant herein. Mr. Elmi averred that he has never entered into any agreement with the plaintiff and accused him of forging his signature on an affidavit sworn on 19<sup>th</sup> March 2020 evidenced by a Forensic Document Examination Report dated 24<sup>th</sup> July 2024. He denied any dealings with the Ministry of Foreign and Diaspora Affairs regarding the alleged debt and asserted that the plaintiff was never a party to the agreement dated 8<sup>th</sup> December 2020, thus the plaintiff has no legal standing to rely on it.
  5. The 1<sup>st</sup> defendant confirmed surrendering 14 property Title documents to the 5<sup>th</sup> defendant on behalf of Maalin Group BVI (UK), with terms that they could only be released upon his instructions. He averred that so far, eight of the said Titles have already been returned to him after a planned investment with the 4<sup>th</sup> defendant failed. He also averred that the 3<sup>rd</sup> defendant is the sole shareholder of the 4<sup>th</sup> defendant company, whereas the plaintiff was a shareholder of Maalin General Services Company Limited, which was later taken over by the 4<sup>th</sup> defendant. Mr. Elmi averred that the plaintiff has no legal right to stop him from reclaiming his Title documents.
  6. The 5<sup>th</sup> defendant in response to the application herein filed a replying affidavit sworn on 18<sup>th</sup> October 2024, by Mr. Ishmael Nyaribo, an Advocate of the High Court of Kenya and the 5<sup>th</sup> defendant herein. He averred that he supports the plaintiff's request for his continued retention of the disputed Title documents but opposes depositing them in Court or with a third party. He stated that in the year 2020, he was engaged to advise on the restructuring of Maalin Group, during which a Memorandum of Restructuring was signed and certain Title documents were deposited with his firm as collateral.
  7. Mr. Nyaribo stated that subsequently, all parties to the Memorandum agreed to pay him Kshs.12,500,000/= in legal fees under a written agreement dated 8<sup>th</sup> December 2020, but the amount remains unpaid despite repeated demands. For the said reason, he asserted that his law firm is entitled to retain the documents under a lien until the fees are fully paid with interest from the year 2020. He deposed that releasing the Title documents to the Court or a third party would violate the agreement, frustrate the restructuring process, and prejudice his firm's rights.
  8. The 2<sup>nd</sup> application is the 1<sup>st</sup> defendant's Notice of Motion dated 30<sup>th</sup> August 2024 filed under the provisions of Order 40 & Order 51 of the Civil Procedure Rules 2010 and all other enabling provisions. The 1<sup>st</sup> defendant prays for an order directing the 5<sup>th</sup> defendant to deposit the six Titles in Court.
  9. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Mohamed Hassan Elmi, the 1<sup>st</sup> defendant herein. Mr. Elmi averred that



pursuant to an agreement dated 8<sup>th</sup> December 2020, he gave 14 property Titles to the 5<sup>th</sup> defendant to be held for Maalin Group BVI (UK), on condition that they be released only on his instructions. He stated that a business agreement he entered into with the 4<sup>th</sup> defendant on 25<sup>th</sup> March 2022 failed, prompting him to request for the return of his Titles. Mr. Elmi averred that eight of the said Titles have since been returned, but six of them remain with the 5<sup>th</sup> defendant despite repeated requests. He stated that he suspects the six Titles may no longer be in the 5<sup>th</sup> defendant's custody and seeks their deposit in Court for certainty. Mr. Elmi asserted that continued retention of the said Titles without his consent infringes on his rights to property, whereas, releasing them to Court will not prejudice the plaintiff or the other defendants in this suit.

10. In opposition to the said application, the plaintiff filed a replying affidavit sworn on 24<sup>th</sup> October 2024 by Mr. Olad Abdihaliq Abdu, the plaintiff herein. He averred that the 1<sup>st</sup> defendant has no contractual or legal basis to demand the release of the six property Titles held by the 5<sup>th</sup> defendant. He contended that the instant application is an abuse of the Court process since the 1<sup>st</sup> defendant is relying on forged documents. Mr. Abdu asserted that the impugned Titles are safe in the custody of the 5<sup>th</sup> defendant and there is no urgent risk warranting their release.
11. The 5<sup>th</sup> defendant also opposed the application dated 30<sup>th</sup> August 2024 vide a replying affidavit sworn on 11<sup>th</sup> November 2024 by Mr. Ishmael Nyaribo, an Advocate of the High Court of Kenya and the 5<sup>th</sup> defendant herein. He averred that the disputed Titles were deposited with his law firm by mutual agreement under a Memorandum of Restructuring of Maalin Group dated 8<sup>th</sup> December 2020. He stated that an Advocate - Client agreement entitles him to retain the Titles as lien until payment of Kshs.12,500,000/= in legal fees, which the 1<sup>st</sup> defendant, the plaintiff and the 2<sup>nd</sup> to 4<sup>th</sup> defendants have refused to pay. He asserted that the fee agreement is undisputed and forms part of the restructuring arrangement. Mr. Nyaribo contended that releasing the said Titles would cause him prejudice and deprive him of lawful lien over unpaid fees.
12. The applications herein were canvassed by way of written submissions. The plaintiff's submissions were filed on 29<sup>th</sup> October 2024 & 26<sup>th</sup> November 2024 by the law firm of Chelangat Law Advocates. The 1<sup>st</sup> defendant's submissions were filed on 1<sup>st</sup> October 2024 & 19<sup>th</sup> November 2024 by the law firm of Iqra Bare & Company Advocates and the 5<sup>th</sup> defendant's submissions were filed on 12<sup>th</sup> November 2024 by the law firm of I.N. Nyaribo & Company Advocates.
13. Ms Rono, learned Counsel for the plaintiff relied on the case of *Giella v Cassman Brown* [1973] E.A. 358 and submitted that the plaintiff has made out a case to warrant being granted the orders being sought herein. She argued that the balance of convenience tilts in his favour since the Title documents deposited with the 5<sup>th</sup> defendant as part of a restructuring process are meant to safeguard his investment. She contended that releasing them will leave the plaintiff without security and at risk, especially since the 1<sup>st</sup> defendant is a Danish citizen who could leave the jurisdiction of this Court at any time, and render enforcement of any resultant judgment difficult.
14. Counsel asserted that the plaintiff has acted in good faith by honouring the restructuring agreement whereas the defendants have acted in bad faith by attempting to bypass the Memorandum of Restructuring. Ms Rono submitted that although pursuant to the provisions of Order 40 Rule 7 of the Civil Procedure Rules this Court has the jurisdiction to set aside an order of interlocutory injunction, in this case the Title documents surrendered to the 5<sup>th</sup> defendant are the sole security for the plaintiff's USD 700,000.00 investment in the 4<sup>th</sup> defendant company.
15. Ms Amonde, learned Counsel for the 1<sup>st</sup> defendant submitted that her client entered into an agreement with Maalin Group Ltd on 25<sup>th</sup> March 2021, and pursuant to the said agreement, the 1<sup>st</sup> defendant



- surrendered fourteen (14) property Titles to the 5<sup>th</sup> defendant, to hold in trust and to release them only upon his instructions. She argued that the plaintiff was neither a party to that nor any related agreement and only acted as a witness.
16. She relied on the Court of Appeal case of Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & another [2015] KECA 784 (KLR) and asserted that the plaintiff lacks the requisite locus standi to file the instant application. She referred to the Court of Appeal case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR) and submitted that the plaintiff has no contractual relationship with the 1<sup>st</sup> defendant, has not shown any infringement of his rights and has filed forged documents, thus he has not established that he has a prima facie case with a probability of success to warrant being granted an order of interlocutory injunction.
  17. Counsel cited the Court of Appeal case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR) and argued that the plaintiff has neither proved advancing USD 700,00.00 nor shown injury incapable of being compensated by damages in the event that the application herein is disallowed. She stated that the 1<sup>st</sup> defendant has demonstrated that the 5<sup>th</sup> defendant, the current custodian of the Titles has now taken sides, making it unsafe for the said Titles to remain in his possession. She stated that the 1<sup>st</sup> defendant fears losing his properties, which cannot be adequately compensated by damages, and it is in the interest of justice and all the parties herein that the Titles be deposited with the Court. Counsel submitted that the balance of convenience tilts in favour of the 1<sup>st</sup> defendant.
  18. Mr. Nyaribo, learned Counsel for the 5<sup>th</sup> defendant argued that its retention of the disputed Title documents is lawful under Section 52 of the *Advocates Act*, which grants Advocates a lien over client documents until outstanding legal fees are settled. He contended that the plaintiff and the 2<sup>nd</sup> to 5<sup>th</sup> defendants' failure pay the agreed Kshs.12,500,000/= legal fees amounts to breach of contract, justifying the lien. Counsel relied on the Court of Appeal case of William Muthee Muthami v Bank of Baroda [2014] KECA 591 (KLR) and submitted that Courts cannot rewrite contracts and parties are bound by their terms.
  19. Mr. Nyaribo also referred to the UN Basic Principles on the Role of Lawyers (1990) and equitable maxims such as "he who seeks equity must do equity" and "he who comes to equity must come with clean hands" and asserted that the plaintiff cannot seek release of the Titles while in breach of payment obligations. He cited the case of Booth Extrusions (Formerly) Booth Manufacturing Africa Limited v Dumbeya Nelson Muturi Harun t/a Nelson Harun & Company Advocates [2014] KEHC 8597 (KLR) and argued that an Advocate may lawfully retain documents until fees are paid, as the lien serves as security for remuneration, thus releasing the documents would undermine this right. Counsel submitted that the 1<sup>st</sup> defendant has not demonstrated sufficient grounds to override the 5<sup>th</sup> defendant's lien, as the documents were deposited with the clear understanding that they would be retained until fees were fully settled.

### **Analysis And Determination.**

20. I have considered the applications herein, the affidavits filed in support thereof, and the replying affidavits by the plaintiff, the 1<sup>st</sup> & 5<sup>th</sup> defendants and the written submissions by Counsel for the parties. The issues that arise for determination are –
  - i. Whether the plaintiff has the requisite locus standi to file the application herein;
  - ii. Whether the plaintiff has made a case to warrant being granted of an order for temporary injunction; and



- iii. Whether the 5<sup>th</sup> defendant should be compelled to deposit six of the disputed Titles to Court.

**Whether the plaintiff has the requisite locus standi to file the application herein.**

21. Locus standi was defined by the Court of Appeal in the case of *Njau v Council of Nairobi*, KLR [1983] 625 as hereunder –
- Locus Standi literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and to say that a person has no locus means that he has no right to appear or be heard in such and such proceedings.
22. Upon perusal of the plaintiff's plaint filed in this suit, it is evident that the subject matter of this suit is USD. 700,000.00, which the plaintiff alleges he invested with the 4<sup>th</sup> defendant at the request of the 1<sup>st</sup> defendant. The plaintiff contended that the business venture failed, prompting the 1<sup>st</sup> defendant on 19<sup>th</sup> March 2020 to swear an affidavit acknowledging receipt of the funds, undertaking to refund the same within two years, and to transfer to him properties of an equivalent value.
23. This Court notes that the 1<sup>st</sup> defendant disputes the validity of the said affidavit, however upon its perusal it is evident that the deponent undertook to repay the investor by selling his property in Mogadishu, Somalia or transferring the property documents that would be equivalent to the money he owes the investor. It is evident that at no point did the affidavit refer to the Titles of the properties that the plaintiff now seeks the 5<sup>th</sup> defendant to be restrained from releasing to the 1<sup>st</sup> defendant or their agents. Further, the plaintiff averred that on 8<sup>th</sup> December 2020, a Restructuring Memorandum was entered into providing for loss assessment and investor compensation, with the 1<sup>st</sup> defendant's Titles deposited with the 5<sup>th</sup> defendant as security. The 1<sup>st</sup> defendant however maintains that the plaintiff was not a party to the said Memorandum and should not have relied on it, in filing the instant application.
24. A review of the Restructuring Memorandum reveals that it concerned the Maalin Group of Companies and stipulated among other things that all investors who incurred losses would be identified through an audit, and a compensation schedule adopted in accordance with Shariah Law. It further stated that the said Memorandum constituted the full and final arrangement between the shareholders of Maalin Group Limited – BVI (UK), thereby nullifying all prior agreements. The Memorandum also provided that deposited properties would remain the depositor's property as security for business transactions, but could be sold or used as collateral to support Maalin Group's business in accordance with the company's rules. The said agreement was executed by two of the 4<sup>th</sup> defendant's Directors.
25. From the foregoing, this Court is not persuaded that the Restructuring Memorandum is binding on the plaintiff in his individual capacity since he was not a party to it. He cannot therefore allege and/or purport to enforce the terms thereunder. This Court is of the considered view that even if the Memorandum mentioned the deposited Titles, it was an arrangement among Maalin Group shareholders, and not with the plaintiff. Furthermore, the Memorandum was clear that the deposited properties would remain the property of the depositor and could only be sold or used as collateral for Maalin Group's business. In the premise, this Court holds that the plaintiff has not demonstrated a clear proprietary interest or an equitable lien over the disputed Titles.
26. This Court therefore finds that the plaintiff did not have the requisite locus standi to file the application dated 12<sup>th</sup> August 2024 which seeks to restrain the 5<sup>th</sup> defendant from releasing the disputed Titles to the 1<sup>st</sup> defendant.



27. In the case of Kipngetich Kalya Kones (Suing as the Administrator of the estate of Kipkalya Kiprono Kones (deceased) v Wilson Kiplangat Kones [2021] KEELC 241 (KLR), the Court while striking out a suit for want of locus standi held that -

The issue on locus standi is a primary point of law almost similar to that of jurisdiction and since the Plaintiff/Respondent was not an administrator to the deceased's estate herein, he lacked the capacity to sue on behalf of the deceased's estate which renders the suit incompetent.

28. In view of the analysis made herein, this Court finds that the application by the plaintiff dated 12<sup>th</sup> August 2024 cannot be sustained for want of locus standi.

**Whether the plaintiff has made out a case to warrant being granted an order of temporary injunction**

29. Interlocutory injunctions are provided for under Order 40 Rules (1)(a) and (b) of the Civil Procedure Rules, 2010 which states as hereunder -

**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.

30. In the case of *Giella v Cassman Brown & Company Limited (supra)*, the Court held as follows on interlocutory injunctions-

"Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

31. Having found that the plaintiff can neither rely on the alleged affidavit sworn by the 1<sup>st</sup> defendant on 19<sup>th</sup> March 2020 nor the Restructuring Memorandum dated 8<sup>th</sup> December 2020 to connect the deposited Titles to his claim, I hold that the plaintiff has not demonstrated any legal or equitable right in respect of the said Titles capable of protection by way of an injunction. Therefore, granting the order of injunction sought would amount to restraining the registered proprietor of the disputed Titles from dealing with his property in the absence of a proven interest, security or otherwise.

32. The Court of Appeal in the case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 others (supra)* defined what constitutes a prima facie case as follows -

"So, what is a prima facie case" I would say that in civil cases 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 as to call for an explanation



or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

33. This Court finds that the plaintiff has not established a prima facie case with a probability of success to warrant being granted an order of temporary injunction.
34. On the issue of damages, it is not in contest that the plaintiff's claim against the defendants is for refund of USD. 700,000.00 plus interest. This is a liquidated claim and it has not been shown that the defendants have no means of paying the said sum to the plaintiff if at all it is proved and/or demonstrated that the plaintiff is entitled to the said sum. In the circumstances, this Court finds that the plaintiff has not demonstrated that he stands to suffer irreparable damage in the event that an order of interlocutory injunction is not granted.
35. In the end, I am of the considered view that the balance of convenience tilts in favour of the defendants as the plaintiff can always be compensated by an award of damages in the event that he emerges successful in this suit.

**Whether the 5<sup>th</sup> defendant should be compelled to deposit six of the disputed Titles in Court.**

36. Having found no nexus between this suit, the alleged affidavit sworn by the 1<sup>st</sup> defendant on 19<sup>th</sup> March 2020 and the Restructuring Memorandum dated 8<sup>th</sup> December 2020, I find no justification to warrant issuance of an order directing the 5<sup>th</sup> defendant to deposit six of the disputed Titles in Court.
37. In the end, this Court finds that the applications herein are not merited. They are hereby dismissed. Since the two applications have been dismissed each party shall bear its own costs. Costs of the 5<sup>th</sup> defendant shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Ms Rono for the plaintiff

Ms Amonde for the 1<sup>st</sup> defendant

No appearance for 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants

Ms Moraa holding brief for the 5<sup>th</sup> defendant

Ms B. Wokabi – Court Assistant.

**NJOKI MWANGI, J.**

