

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CIVIL SUIT NO. E002 OF 2025

**ETHICS & ANTI-CORRUPTION
COMMISSION.....PLAINTIFF/APPLICAN
T**

VERSUS

GALMA GOLICHA.....1ST DEFENDANT
ZAINABU HERSI IBRAHIM.....2ND
DEFENDANT
SUJO ILDHANI.....3RD DEFENDANT
FRANCIS KARIUKI KAMENDI.....4TH DEFENDANT
BASHIR HASSAN ABEY MAMO.....5TH
DEFENDANT
HABIBA IBRAHIM DIMBIL.....6TH DEFENDANT
BILAL BASHIR HASSAN.....7TH
DEFENDANT
DRESCOLL LIMITED.....8TH DEFENDANT

AND

**MARASABIT COUNTY GOVERNMENT.....INTERESTED
PARTY**

RULING

A. INTRODUCTION

1. The Application before this court for determination is the Notice of Motion Application dated 10th February 2025 brought under the provisions of **Section 1A, 1B, 3 & 3(A) of the Civil Procedure Act and Order 40 rule 1 and 2 of the Civil Procedure rules, 2010**. The applicant sought several orders; that;

a) Spent

b) Spent

c) Spent

d) That pending the hearing and determination of this suit, an order of injunction be issued prohibiting the interested party from making payments amounting to Kshs.20,500,000/= to the 8th defendant in respect of tender number MBT/COU/ENERGY/106/2018-2019.

e) That pending the hearing and determination of this suit, an order of injunction be issued prohibiting the 8th defendant from demanding payments amounting to Kshs.20,500,000/= from the

interested party in respect of tender number MBT/COU/ENERGY/106/2018-2019.

f) That this suit be consolidated with Marsabit HCCC NO 3 OF 2020, Drescoll Limited Vrs Marsabit County Government.

g) That there be a stay of further execution of Marsabit HCCC No 3 of 2020, Drescoll Limited Vrs Marsabit County Government pending the inter parties hearing of this application and thereafter the hearing and determination of this suit

h) That the costs of this Application be provided for.

2. The application is supported by the grounds stated on the face of the said application and the supporting affidavit of one Eveline Odipo, a forensic investigator working for the Applicant Commission, and is opposed by the 1st and 2nd respondents, who filed their grounds of opposition dated 18th March 2025, and the 4th to 8th respondents, who filed their

replying affidavits dated 19th March 2025 and 24th April 2024 respectively.

B. THE APPLICATION

3. The applicant averred that they were investigating/inquiring into the irregular procurement and award of tender to supply and deliver one (1) fire engine track to the county Government of Marsabit at a cost of **Kshs.62,000,000/=** during the financial year 2018/2019 vide tender **No MBT/COU/ENERGY/106/2018-2019** and pursuant to their mandate had undertaken a forensic audit which established the following details;

- i. That on 2nd April 2019, the interested party herein, through its department of Energy and urban development, did commence the procurement process through open tender seeking to acquire one fire engine, and upon opening the bids, two companies had responded to the said tender; being the 8th respondent, who quoted **Ksh.62,000,000/=** and Achelis Materials Handling Ltd, who made a bid of **Kshs.29,300,000/=**.

- ii. Investigations had established that the 8th respondent had falsified notification of awards from Godana Trading Ltd and Darfords Industries Ltd as proof of previous works done and that the 1st, 2nd, and 3rd respondents, who were members of the evaluation committee, had illegally used additional evaluation criterion NOT provided for in the tender document to award this tender to the 8th respondent herein.
 - iii. The evaluation committee had also wrongly disqualified the other bidding company (M/S Achelis Material Handling Ltd) on the basis that they had failed to provide a bid bond of **Kshs.1,000,000/=**, yet the same was provided from Commercial Bank of Africa (CBA) Ltd. Subsequently, the tender was awarded to the 8th respondent, and a local purchase order No 3158493 dated 15th May 2019 was issued.
4. Upon receipt of the LPO, the 8th respondent proceeded to import one fire engine from Turkey, which landed in Mombasa on 2nd April, 2020, about 10 months after the LPO was issued. The importation documents revealed that it had cost the 8th

respondent about **98,200 EURO** to purchase the same, which converted to **Kshs.11,334,833.20/=** plus additional cumulative charges and insurance of **Kshs.341,856.62/=**.

5. The Applicant contended that, without doubt, the fire engine was supplied to the interested party at an exaggerated price, yet its valuation did not exceed **Kshs.29,100,000/=**. They also faulted the 4th respondent for issuing a misleading professional opinion to the Chief Officer, Energy and Urban Development, as he relied on an expired contract to recommend a fire engine truck of lesser quality than what was contracted to be supplied.

6. Finally, plaintiff further averred that their investigations had also uncovered the fact that the fire engine truck supplied differed in specifications when compared to what was bid for, and did not have all the equipment required. To enforce payment, the 8th respondent has sued the interested party in ***Marsabit HCCC No 3 of 2020 Drescoll Limited Vrs Marsabit County Government***, where the county had failed to enter an appearance, and consequently, judgment was issued as against

them on 29th September 2020, ordering them to pay the 8th respondent sums due under the aforementioned tender.

7. So far, the 8th defendant had been paid a total sum of **Ksh.42,000,000/=**, and there was a real possibility that the remaining amount of **Kshs.20,500,000/=** would be released to the 8th respondent unless this court issues the orders sought. The applicant thus urged the court to issue the orders sought in public interest pending the hearing and determination of this suit.

C. THE RESPONSES

(i) Grounds of Opposition by the 1st and 2nd Respondent

8. The 1st and 2nd respondents filed their grounds of opposition dated 18th March 2025, wherein they stated that the 8th respondent had a valid decree issued in their favour in **Marsabit HCCC No 3 of 2020, Drescoll Limited Vrs Marsabit County Government**, which decree could only be set aside in the said suit and not challenged through new proceedings as initiated by the Applicant. They thus

urged this court to find that this application constituted an abuse of the process of the court and prayed that the same be dismissed.

9. The 3rd respondent did not file any response to this application.

(ii) 4th Respondents' Replying Affidavit

10. The 4th respondent relied on his Replying affidavit dated 19th March 2020, wherein he deponed that he was not a member of the evaluation committee and therefore he did not have a chance to peruse the said tender and/or to conduct due diligence in respect thereof. He also noted that it was the exclusive function of the said evaluation committee to determine whether Achelis Material Handling Ltd's bid conformed with the bid requirements or not.
11. After the said tender process had been completed, Achelis Material Handling Ltd had the time and opportunity to question the outcome and/or to request a review pursuant **to Section 167(1) of the Public Procurement and Asset Disposal Act, 2020**, but did not do so and thus acquiesced with the evaluation committee determination. He thus

denied any inference made of impropriety on his part and emphasized that at no time did he rely on an expired contract to recommend acceptance of a fire engine that was of less quality than contracted to be supplied.

12. It was his further contention that the applicant had not annexed any valuation of the supplied fire truck to ascertain that its value was **Kshs.29,100,000/=** and accused them of litigating as a proxy on behalf of Achelis Material Handling Ltd, who was a sore loser. He further noted that the 8th respondent held a valid decree, and it was also against public policy not to pay pending bills, which would end up accumulating penalty interest to the interested parties detriment.
13. The 4th respondent thus urged the court to dismiss the application under review and/or, in the alternative, if the same is allowed, it be on the condition that the plaintiff Applicant be compelled to indemnify the interested party against the loss they would suffer as provided for under **Section 49(1) and 54 of the Sale of Goods Act, Section 140(a),(c) of the Public Procurement and Asset**

disposal Act, 2015, Regulation 139 of the Public Procurement and Asset Disposal regulations 2020, and Section 26(1) of the Civil Procedure Act.

(iii) Replying Affidavit of the 5th, 6th, 7th and 8th Respondents

14. The above respondents relied on the replying affidavit dated 24th April 2025, sworn by the 5th defendant, who stated that the investigations commenced by the plaintiff were initiated without a proper legal or factual basis and infringed on their right to dignity and fair trial.
15. They contended that since 2019, the plaintiffs' agents have etched a pattern of witch-hunt and intimidation against them, which could be demonstrated by the following incidents;
 - (a) That in the year 2022, the plaintiff instituted ***Anti-Corruption & Economic crimes suit No E018 of 2022; EACC Vs Ali Godana Wako & 9 Others*** alleging that they had irregularly obtained payment with respect to Tender Number ICG/020/2017-2018 and

Tender Number ICG/021/2017-2018 for supply and delivery of a fire engine to the county government of Isiolo. The 5th and 8th respondents are parties in the said suit.

- (b) The plaintiff's chairperson, Bishop David Oginde, while on a national television (JK Live) show on Citizen TV, a station with an international audience, had singled them out and stated that the plaintiff had concluded their investigations over the supply of the fire engine truck to the interested party and purported that they had embezzled Kshs.69 Million, which utterances were not factual.
- (c) On 12th December 2023, at about 10 am, three officers from the plaintiff commission visited his home at South C, on instructions from the ODPP to arrest him over the supply of the fire truck to Marsabit county, and this was done ostensibly to drive fear into him and coerce him not to demand for the outstanding sums.

(d) The 5th respondent was arrested and charged in ***Isiolo Anti-Corruption Criminal Case No. E001 of 2024***, which matter was later terminated and withdrawn by the ODPP, which act confirmed the ulterior motive continuously advanced by the plaintiff to humiliate and malign his good business repute.

16. Despite their tribulations, the 5th respondent insisted that they had at all times acted within the law, and upon notification of award and confirmation of acceptance of the Marsabit tender, had procured a new firefighting vehicle, facilitated its clearance from the port, ensured the said motor vehicle was inspected and tested by Kenya Beureau of Standards after which they caused it to be delivered to the interested party on 21st April 2020. The same was duly inspected, and the acceptance of delivery was signed by the county director of supply chain Management after which they sought payment of the balance remaining of the tender amount.

17. The 5th to 8th respondents denied the plaintiffs' averments that they had delivered a fire engine with

different specifications other than what was provided for in the tender documents, and emphasized that the delivered fire truck was a brand-new truck of Italian make (IVECO) but was assembled in Turkey. Furthermore, they had not falsified any tender documents to win the said award, as alleged by the plaintiff, and also noted that despite demanding copies of the documents alleged to have been falsified, none had been supplied to enable them to respond conclusively to the issues raised.

18. The interested party, despite taking delivery of the fire truck, subsequently refused to settle the sum due, and through the 8th respondent, they had filed ***Marsabit High Court Case No 3 of 2020*** as against the interested party, who despite being served, did not enter an appearance nor did they file their defence. They thereafter applied for judgment to be entered as against the interested party, and the same was accepted on 23rd September, 2020.

19. The 5th to 8th respondents reiterated their earlier assertions that the tender process was above board and that the funds utilized to purchase the fire truck were lawfully budgeted, obtained, and duly

accounted for. It was therefore unfair, illegal, and unjust for the plaintiff to continue with their witch-hunt, despite there being no outright complainant. It also constituted an abuse of the process of the court to file a new suit to challenge the valid decree issued in **Marsabit HCCC No 3 of 2020, Drescoll Limited Vrs Marsabit County Government.**

20. It was also a further abuse of court process for the plaintiff to investigate, prosecute, and simultaneously file civil litigation as against the respondents, which process created a procedural and evidential imbalance by denying the respondents access to crucial documents, the basis of which they were being “persecuted.” The applicant could also not be the investigator, and prosecutor in their own cause.

21. The 5th to 8th respondents thus urged the court to find that the plaintiff's actions were based on malicious investigations, irregular arrest, and initiation of civil suits grounded on speculative grounds, which action did constitute unconstitutional harassment of the respondents and infringement of their rights

enshrined under **Articles 27,47, and 50 of the Constitution of Kenya 2010.**

22. The 5th to 8th respondent thus urged the court to find that this suit had been instituted with an ulterior motive and could not be consolidated with **Marsabit High Court Case No 3 of 2020**, as the prior suit had been concluded. They also urged this court to find that the application under consideration did not have merit and urged the court to dismiss the same.

(iv) **Response by Marsabit County Government.**

23. The interested party did file their replying affidavit, sworn by the county Secretary, Mr Hussein Tarry Sasura, who confirmed that a default judgment had been entered as against them in **Marsabit High Court Case No. 3 of 2020**, whose effect was to compel them to pay the 8th respondent a sum of **Kshs.62,000,000/=** to together with interest at commercial rates from 4th May 2020 until payment in full.

24. The said judgment had not been appealed against, nor had it been set aside, and as things stood, what was pending was payment of the balance of the

decretal sum. This suit and **Marsabit HCCC No 3 of 2020** could therefore not be consolidated, with this suit, nor could they be merged. They also faulted the applicant's approach in attempting to block the decree issued in **Marsabit HCCC No 3 of 2020** through this suit and termed it as unprocedural and amounted to an abuse of the process of the court, which should not be tolerated.

25. In view of the foregoing, the Interested party urged the court to dismiss the application under consideration.

C. SUBMISSIONS

26. The plaintiff/applicant rehashed the background facts, pointing out the irregularities unearthed by their investigations, and further stated that they had the statutory mandate under **Section 11 of the EACC Act and Article 252 (1),(a) of the Constitution** to institute proceedings to recover public property. Reliance was placed in **Nakuru Civil suit No 43 of 2008, KACC Vs Sammy Komen Mwaita & Another**, to emphasize this point.

27. As regards the principles of granting an injunction, it was their submissions that they had sufficiently shown that the procurement process was marred with glaring irregularities which contravened provisions of ***Section 45(3),(a),53(8)& 80(2) of the Public Procurement and Asset Disposal Act, 2015***, thus rendering the entire process to be null and void. Reliance was placed in ***Mrao Ltd Vr First American Bank of Kenya Ltd, & 2 others (2003) Eklr & Nguruman Limited Vs Jan Nielsen & 2 others (2014) eKLR*** to emphasize that they had established a prima facie case
28. On the principle of balance of convenience, the applicant averred that the court should always opt for the lower rather than the higher risk of injustice. The sums sought were public funds, which would still be available should the court find that the 8th defendant ought to be paid. Reliance was placed in the case of ***Hader Limited vs SMB Bank (Kenya) Limited (Civil case E031 of 2023), (2024) KEHC 8536 (KLR), which referred to the case of Amir Suleiman Vs Amboseli Resort Limited (2004),***

Eklr, and Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eklr.

29. It was therefore in public interest that the orders sought be granted to prohibit the transfer, disposal, and/or disbursement of the public funds pending hearing and determination of the main suit.
30. The 1st and 2nd respondents submitted that the plaintiff/Applicant was not deserving of the orders sought as they had not established a prima facie case with high chances of Success due to the fact that their case was based on allegations of fraud, which had not been pleaded nor proved. Reliance was placed in the case of **Mrao Limited Vs First American Bank Limited, Vijay Morjaria Vs Nansingh Madhisingh Darbar & Another, Waska Company Limited Vs Nancy Wanja Gatabaki & Another, and Parkar & Another Vs NO & 2 Others.**
31. Secondly, they stressed that the plaintiff's documents filed in support of their case did not prove that the procurement process undertaken was fraudulent, irregular, and/or illegal, nor had the applicant established that they were part of the

tender committee that awarded the said tender for any liability to attach against them.

32. The 1st and 2nd respondents further opposed the applicant's prayer for consolidation of this suit and ***Marsabit HCC No. 3 of 2020***, as the latter suit had been finalized and its decree had not been challenged nor had it been set aside. The same was thus binding and could not be subject to collateral attack by a separate decision. Reliance was placed in the decision of ***Wilson Vs The Queen, Kenya Hotel Properties Limited Vs Willesden Investment Limited & Another***, and ***section 34 of the Civil Procedure Act***, which provided that all questions arising between the parties to the suit in which the decree was passed or their representative ***shall be determined by the court executing the decree and not by a separate suit.***

33. Based on the foregoing reasons, the 1st and 2nd respondents urged the court to find that this application lacked merit and be pleased to dismiss the same.

34. The 4th respondent did not file his submissions opposing this Application

35. The 5th to 8th Respondents also filed their submissions rehashing the contents of their replying affidavit and faulted the Applicant for filing this suit with the full knowledge that the 8th defendant had obtained a valid judgment in ***Marsabit HCC No. 3 of 2020***, which they had never applied to set aside. This suit, therefore, lacked a proper factual foundation, had no probable cause, and constituted an abuse of the court process thus, should not be entertained. Reliance was placed in ***Republic Vs Paul Kihara Kariuki, Attorney General, 2 others, Ex parte Law Society of Kenya, Pyaralalmhandbheru Tajput Vs Barclays Bank & Another, Civil Case No 38 of 2004 & Kuria & 3 others Vs Attorney General.***

36. As regards the main prayers sought in the said Application, the 5th to 8th respondents submitted that the applicant had not established a prima facie case with any probability of success, nor had they established that they would suffer irreparable loss which could not be compensated by refunding any monies paid out if the 8th respondent lost this suit.

37. They maintained that the fire truck had been delivered as per the tender specifications, and contrary to the applicants averments, it was the 8th respondent and its directors who were suffering and were financially handicapped since they had not been paid the balance outstanding, yet they had met their part of the bargain. Reliance was placed in the case of **Banis Africa Ventures Limited Vs National Land Commission (2021) Eklr & Giella vs Cassman brown & Company Limited (1973) E.A 358.**

38. The 5th to 8th respondents further emphasized that the applicant's case was based on mere allegations/hearsay, as they had not presented any evidence of the irregularities pleaded. To the contrary, their own witness (Kulamo Bullo) had acknowledged that the Marsabit County cabinet had budgeted for the purchase of a fire truck using funding from the World Bank grant under the Kenya Urban Support Programme, and the said tender process could not be faulted for being irregular and/or unlawful.

39. Finally, the 5th to 8th respondents also emphasized that issuing an order of stay of execution would be contrary to the provisions of **Section 34(1) of the Civil Procedure Act**, which provided that execution process should be carried out in the primary file where the decree was passed. Consolidation order too could not be issued as **Marsabit HCCC No 3 of 2020, Drescoll Limited Vs Marsabit County Government** had been determined and the court in the said matter was functus officio. Reliance was placed in the case of **Trusteed Society of Human Rights Alliance Vs Cabinet Secretary for Devolution and Planning & 3 others (2017) eklr**, where it was held that the court should not issue orders in vain.
40. They concluded by stating that the plaintiff had demonstrated a pattern of malicious litigation and intimidation against the 8th respondent and its directors, which, when cumulatively looked at, proved that they were acting with nefarious intent and in bad faith. They therefore prayed that the said application be dismissed with costs.

D. ANALYSIS & DETERMINATION

41. I have carefully considered the Notice of Motion Application, the Supporting Affidavit, the Respondent's Replying Affidavit as well as the submissions of the parties and discern that the issues which arise for determination are whether;

- a) An order of temporary injunction should issue prohibiting the interested party from making payment amounting to Kshs 20,500,000/= to the 8th respondent in respect of tender Number MBT/COU/ENERGY/106/2018-2019 and/or whether this court should stay execution of the decree issued in Marsabit HCCC NO 2 of 2020 pending hearing and determination of this suit.***
- b) This suit should be consolidated with Marsabit HCCC NO 2 OF 2020.***
- c) Who should bear the costs of this suit.***

ISSUE I

Temporary Injunction and/or stay of execution of the decree issued in MARSABIT HCCC NO 2 OF 2020

42. Temporary injunctions are governed by **Order 40 Rule 1 of the Civil Procedure Rules 2010** provides that;

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.

43. The principles of granting injunctions are governed by the locus classicus case of **Giella vs Casman Brown [1973] 358**, the said principles were restated in the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 Others, CA No. 77 of 2012**, 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. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should

normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted."

44. What constitutes prima facie was discussed by the Court of Appeal in the case of **Mrao Ltd vs First American Bank of Kenya Ltd [2003] eKLR**, where the court stated as follows:-

“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are well settled. In Giella v Cassman Brown to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner he was considering, which was in relation to the pleadings that had been put forward in that case....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.”

45. In **Nguruman limited Vs Jan Bonde Nielsen & 2 others** (supra), the court of Appeal agreed with the definition of a prima facie case as stated in **Marao case** and stated

“We adopt that definition save to add the following conditions by way of explaining

it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the

existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.

46. As regards proof of irreparable injury, **Halsbury's Laws of England, 3rd Edition Volume 21, Paragraph 739 page 352** defines irreparable injury

as;

'injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by grant of injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the injury in respect of

which relief is sought is likely to destroy the subjected matter in question.'

47. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR* the court further did discuss the issue of irreparable damage and held that:

“If the applicant establishes a prima facie case that alone is not sufficient to grant an interlocutory injunction, the Court must further be satisfied that the injury the applicant will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

48. That the Court of Appeal in the said “**Nguruman case (supra)**” further held that:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prim facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that

monetary compensation, of whatever amount, will never be an adequate remedy.”

49. Back to the case at hand, based on the material presented before court and without going into the merits of the allegations made, the plaintiff has indeed established on a balance of probability that there might have been some irregularity in the tender process undertaken to acquire the fire truck and thus tipped the needle to shown that there exists a possibility that public funds may be expended unlawfully, thereby infringing on public right of Marsabit residence to get affordable, transparent and accountable service.
50. Be that as it may, the parties herein all concur that a previous suit, being **Marsabit HCCC No 3 of 2020, Drecoll Limited Vs Marsabit County Government**, had been filed a decree was issued in favour of the 8th respondent in the sum of **Kshs 62,000,000/=** plus costs and interest. Out of the said sum, **Ksh 42,000,000/=** has already been paid, and the balance outstanding was **Kshs 20,500,000/=**, which payment the Applicant seeks

to block through this application. The question that this court has to grapple with is whether it can issue an injunction to stop payment of a decree issued by a different court of concurrent jurisdiction.

51. Courts are expected to uphold the orders of other courts in order to maintain the dignity and consistency of the judicial process. Issuing an injunction in this suit, as against a valid decree issued from another court, would undermine judicial integrity, which position would be untenable and constitute an abuse of the process of the court. The only tenable position is for the parties to go back and litigate in **Marsabit HCCC No 3 of 2020, Drecoll Limited Vs Marsabit County Government**, as the first port of call. See **United Insurance Vs Odingo & Co Advocates and others, Kisumu High Court Civil suit No 410 of 2000 (Unreported)**.

52. I am further fortified in taking this position by placing reliance on the provisions of **Section 34(i) of the Civil Procedure Act**, which also provides that;

“ All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to

the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

53. Considering the foregoing, I do find that the applicant has failed to establish a prima facie case with high probability for success, nor can this court issue an order of stay of execution of the decree issued in ***Marsabit HCCC No 3 of 2000***. Having so established, the next limb of irreparable injury and the balance of convenience need not be considered.

ISSUE II

Consolidation of this suit and Marsabit HCCC No. 3 of 2020

54. The jurisdiction to consolidate suits is donated by ***Order 11 Rule 3 of the Civil Procedure Rules***. In **Prem Lala Nahata & Anor vs Chandi Prasad Sikaria** [2007] 2 Supreme Court Cases 551, the India Supreme Court held that:-

“It cannot be disputed that the Court has power to consolidate suits in appropriate

cases.... The main purposes of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common questions of law or fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions; or that for some other reasons it is desirable to make an order consolidating the suit.”

55. In **Nyati Security Guards & Services Ltd vs Municipal Councilk of Mombasa [2000] eKLR**, the court held: -

“The situations in which consolidation can be ordered include where there are two or more

suits for matters pending in the same court, where: -

a. Some common questions of law or fact arise in both or all of them.

b. The rights or reliefs claimed in them are in respect of the same transactions;

c. For some other reasons, it is desirable to make an order for consolidating them.”

55. From the foregoing, it is clear that the Court has a wide discretion in ordering consolidation. Consolidation will be ordered if there is a common question of law or fact in the suits, the reliefs or rights sought arise from the same or a series of transactions, or for any other reason, such as for convenience, avoiding multiplicity of suits, and to meet the overriding objective set out under the **Civil Procedure Act, Cap 21 Laws of Kenya**.

56. This suit touches on common question of law and series of transactions as raised in **Marsabit HCCC No 3 of 2020**. The only difficulty that arises, which mitigates against the issuance of the consolidation order, is that the latter suit has been determined and a valid

decree extracted on 23rd September, 2020. For the aforementioned reason, no valid consolidation order can be issued as the same would be rendered superfluous.

E. DISPOSITION

57. For the foregoing reasons, I find that the Applicant has not demonstrated and/or met any of the prerequisite conditions necessary to grant the injunctive orders in his favour and proceed to find that the Notice of Motion application dated 10th February 2025 is without merit and is accordingly dismissed with costs to the respondents.

58. It is so ordered.

READ, SIGNED, and DELIVERED virtually at
MARSABIT on this **21st** day of **OCTOBER, 2025.**

FRANCIS RAYOLA OLEL
JUDGE

Delivered on the **virtual platform, Teams** this **21st**
day of **OCTOBER, 2025.**

In the presence of;

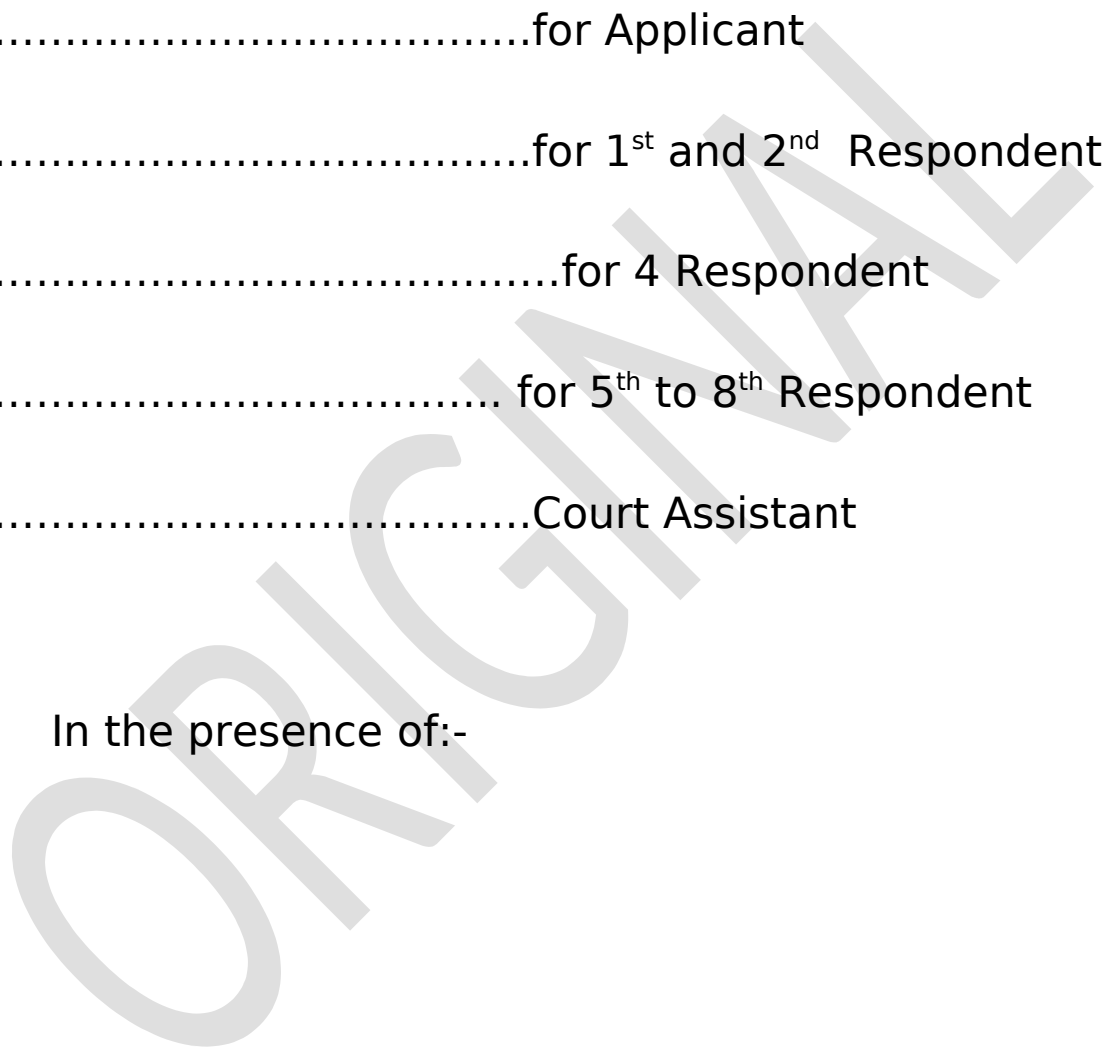
.....for Applicant

.....for 1st and 2nd Respondent's

.....for 4 Respondent

..... for 5th to 8th Respondent

.....Court Assistant



In the presence of:-