



**Galaxy Middle East & Africa Limited t/a Smart Pro (Your Trust Our Mission) & another v Oki Genral Trading Kenya Limited (Civil Case E038 of 2025) [2025] KEHC 13976 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E038 OF 2025  
DO CHEPKWONY, J  
OCTOBER 3, 2025**

**BETWEEN**

**GALAXY MIDDLE EAST & AFRICA LIMITED T/A SMART PRO (YOUR TRUST OUR MISSION) ..... 1<sup>ST</sup> PLAINTIFF**

**HONEY KHATWANI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**OKI GENRAL TRADING KENYA LIMITED ..... DEFENDANT**

**RULING**

1. On the 25<sup>th</sup> August, 2025, the Plaintiff filed an application dated 22<sup>nd</sup> August, 2025, and later on the 26<sup>th</sup> August, 2025 filed a Supplementary Notice of Motion dated 26<sup>th</sup> August, 2025 principally seeking temporary injunctive orders to restrain the Defendants from selling, transferring, disposing, or otherwise interfering with goods attached from the Plaintiff’s warehouse at Baba Dogo on or about 21<sup>st</sup> August, 2025.
2. The applications were premised on the Plaintiffs’ contention that the execution undertaken by the Defendants was unlawful, oppressive, and irregular, as the same was carried out without proper notice, service of process, or lawful proclamation. They further aver that the interlocutory Judgment upon which the execution was founded in Milimani HCCOMM No. E359 of 2025 was irregularly obtained without service of summons, thereby violating their constitutional rights under Articles 47 and 50 of *the Constitution*.
3. The Plaintiffs pleaded that the removal of their stock and equipment has crippled their business operations, exposed them to irreparable financial and reputational harm, and placed their assets at imminent risk of unlawful disposal. They have also cited threats of execution extending to their private residences, which they viewed as intimidation and harassment.



4. The 2<sup>nd</sup> Plaintiff also highlights that he was previously subjected to criminal proceedings in MCCRmisc/E361/2025, but the Office of the Director of Public Prosecutions directed that no charges be preferred against him and closed the matter. Hence, in their view, the present enforcement efforts by the Defendants are therefore a continuation of the same harassment, pursued in bad faith, and intended to unjustly criminalize what is a purely civil and commercial dispute that remains sub judice.
5. It is their case that the Defendants' actions have contravened the Civil Procedure Rules, the [Auctioneers Act](#), and the fundamental principles of natural justice. They insist that unless this Court intervenes to preserve the status quo, the pending challenge to the interlocutory judgment will be rendered nugatory, and the Plaintiffs' constitutional and proprietary rights will stand irreversibly violated.
6. In conclusion, the Plaintiffs have urged this Court to intervene in the interests of justice and equity by granting urgent protective orders to restrain further unlawful execution, to secure the release of their impounded goods, and to shield them from continued harassment. They also undertake to comply with any just conditions that the Court may impose, emphasizing that their application has been made in good faith and solely to preserve their rights and safeguard the integrity of ongoing judicial proceedings.
7. On the other hand, the Defendants, through their application dated 27<sup>th</sup> August, 2025, seek to set aside the said interim orders, to strike out the Plaintiffs' application, and to dismiss this suit altogether. Their case rests on several grounds. First, they argue that Judgment had already been regularly obtained in Milimani HCCOMM No. E359 of 2025, *Oki General Trading Kenya Limited v Galaxy Middle East & Africa Limited & 3 Others*, on 24<sup>th</sup> July, 2025. Pursuant to that Judgment, execution had commenced and the Plaintiffs' goods were attached on 20<sup>th</sup> August, 2025, with a sale scheduled for 4<sup>th</sup> September, 2025. In their view, this was a lawful process flowing from a valid Judgment and decree of the court.
8. Secondly, the Defendants contend that the Plaintiffs were not candid with this Court in that they failed to disclose that they had already moved the High Court in Nairobi, in the same Milimani matter, seeking orders to stay execution, to secure release of the attached property, and to set aside the Judgment. That application was placed before the Court on 22<sup>nd</sup> August, 2025, but the Court declined to certify it urgent or to grant the orders sought, instead adjourned it to 8<sup>th</sup> October, 2025. In the Defendants' view, dissatisfied with the Nairobi Court's decision, the Plaintiff filed a parallel suit in Kiambu on the very same date, 22<sup>nd</sup> August 2025, and sought identical reliefs which had been declined in Nairobi. This, they say, is a blatant case of forum shopping, *res judicata*, and abuse of the court process.
9. Thirdly, the Defendants argue that the interim orders issued by this Court on 25<sup>th</sup> and 26<sup>th</sup> August, 2025 were irregular and unlawful. They assert that this Court, sitting in Kiambu, effectively reversed the decision of the High Court in Nairobi by granting the same orders which had been expressly declined there. According to them, this amounts to the High Court in Kiambu sitting on appeal over its coordinate jurisdiction, which is impermissible.
10. The Defendants also take issue with the fact that the impugned orders directed the National Police Service to enforce compliance. They argue that such a direction was procedurally irregular and legally unwarranted in the circumstances.
11. Moreover, the Defendants contend that the orders granted herein are final in nature and, if allowed to stand, would have the effect of determining the claim without a hearing and obstructing the execution of a lawful decree of the Nairobi Court. They insist that allowing the Plaintiffs to maintain this suit will



defeat the ends of justice and permit litigants to abuse the judicial process by engaging in duplicative litigation.

12. Through the supporting affidavit of Deepak Rajoriya, a Director of the 1<sup>st</sup> Defendant, the Defendants reaffirm that the orders sought are necessary to protect the integrity of the judicial process. They argue that the Plaintiffs cannot pursue parallel reliefs in different courts, and that their conduct amounts to bad faith and deliberate forum shopping. The Defendants stress that this Court has the power under Sections 5, 7, and 63(e) of the *Civil Procedure Act* and Orders 2 Rule 15(d) and Order 40 Rule 7 of the Civil Procedure Rules to strike out the suit, set aside the interim orders, and prevent further abuse of the process.
13. In conclusion, the Defendants urge the Court to allow their application, set aside the impugned interim injunctions, strike out the Plaint, and dismiss the suit. They maintain that the Plaintiffs are attempting to obstruct the lawful execution of a valid decree, and that equity and justice demand that this Court should not lend its hand to such abuse.

### **Determination**

14. Before delving into the merits of either applications, it must be underscored that the interim injunctive orders issued by this court on the 25<sup>th</sup> and the 26<sup>th</sup> August, 2025 are inherently provisional and interlocutory in nature. They are not conclusive determinations of the rights of the parties but are designed to preserve the subject matter and maintain the status quo until the Court has the benefit of hearing both sides. The Court of Appeal in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 laid down the principles guiding the grant of such relief, and the orders herein were granted strictly within that framework. It is therefore misplaced and legally untenable for any litigant, whether personally or through their representatives, to insinuate that the grant of interim relief points to corruption, bias, or incompetence on the part of the Court. Such allegations overlook that Courts are duty-bound to ensure that litigants are not prejudiced by the dissipation of subject matter before their claims can be fairly adjudicated.
15. This Court wishes to point out that when the application was placed before it, it relied on the strength of the affidavit evidence placed before the Court, and was persuaded that the Plaintiffs had demonstrated a prima facie case and that the substratum of the suit faced imminent risk of being wasted or alienated without all parties being involved in the matter hearing on merit. Accordingly, this Court granted interim protective orders on 25<sup>th</sup> and 26<sup>th</sup> August 2025 pending inter parties hearing of the applications.
16. The Court reiterates that it has not, at this stage, finally pronounced itself on the issues arising in this dispute and to suggest otherwise would be to put the proverbial horse before the cart. The interim injunction was granted strictly to preserve the substratum of the case and to ensure that the eventual determination is not rendered academic and any perception to the contrary ignores both the spirit and the letter of the law governing interlocutory applications.
17. Now having carefully considered the pleadings, affidavits, and submissions of counsels for the parties, it is evident that the substratum of the present dispute is intertwined with the matters in issue in *Milimani HCCOMM No. E359 of 2025*, in which an interlocutory judgment was entered. It is therefore only proper that all questions relating to the validity of that judgment, the propriety of execution, and the rights of the parties be ventilated before the *Milimani Court* since addressing such issues would amount to this Court usurping the jurisdiction of the *Milimani Court* and sitting in review or appeal over a Court of concurrent jurisdiction which is impermissible. The doctrine of judicial comity, together



with the principles against forum shopping, require that this dispute be resolved in the forum where it originated.

18. Moreover, under Sections 1A, 1B, and 3A of the *Civil Procedure Act*, this Court is enjoined to give effect to the overriding objective of the law and ensure the just, expeditious, and proportionate disposal of cases. Further, under Section 18 of the *Civil Procedure Act*, this Court has the discretion to transfer suits to another Court where justice so demands.
19. Accordingly, the most judicious course is to forthwith transfer this suit to the High Court at Nairobi (Milimani Commercial Division) for consolidation and further directions with HCCOMM No. E359 of 2025: Oki General Trading Kenya Limited v Galaxy Middle East & Africa Limited & 3 Others which is scheduled for inter-parties hearing on the 8<sup>th</sup> October, 2025.
20. However, in order to preserve the substratum of the case and to ensure that the Plaintiffs' claim is not rendered nugatory before the Nairobi Court has had the opportunity to pronounce itself, I hereby extend the interim orders of 25<sup>th</sup> and 26<sup>th</sup> August, 2025 pending further directions by the Milimani Court.
21. In the result, I make the following orders:-
  - a. This suit, Kiambu HCCOMM No.E038 of 2025, is hereby transferred to the High Court at Nairobi (Milimani Commercial Division) for consolidation with Milimani HCCOMM No. E359 of 2025.
  - b. The interim injunctive orders issued on 25<sup>th</sup> and 26<sup>th</sup> August, 2025 are hereby extended pending further orders and directions of the Milimani Court.
  - c. Costs of the present applications shall abide the outcome of the consolidated proceedings.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3<sup>RD</sup> DAY OF OCTOBER,2025.**

**D. O. CHEPKWONY**

**JUDGE**

