

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCC CASE NO. E514 OF 2022**

**LAKE OIL LIMITED .....**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**ZALPET KENYA LIMITED .....**  
**DEFENDANT/RESPONDENT**

**RULING**

1. This Ruling is in respect of the Plaintiff/Applicant's application by way of a Notice of Motion dated 20<sup>th</sup> December, 2024.

**Background Facts**

2. The Applicant filed the Notice of Motion dated 20<sup>th</sup> December 2024 seeking the following orders;
  - a) *Pending hearing and determination of the Application and the suit herein, a mandatory injunction does issue directing the Defendant/Respondent to perform its duties and comply with its obligations under the parties' contract commencing 1st January, 2020, and ending 31<sup>st</sup> December, 2029.*

- b) The court to direct the Officer Commanding Police Division, Kayole area, Nairobi, and the officer commanding station, Kayole Police station to assist in the implementation of the orders the court is pleased to grant.*
- c) Costs of this Application be borne by the Defendant/Respondent.*
3. The Application was supported by the Affidavit of **Najib Hussein** who stated that the Plaintiff/Applicant and Defendant/Respondent entered into a marketing license agreement effective 1st January 2020 to run until 31st December 2029. Under the agreement, the Defendant undertook to brand its station in the Plaintiff's colours and designs, exclusively source fuel from the Plaintiff, maintain a minimum monthly sale of 150,000 liters, and keep a minimum stock of 30,000 liters for at least three days. The Plaintiff duly performed its obligations in the first year of the contract.
4. However, in January 2021, the Defendant began breaching the agreement by failing to meet the required minimum quantities and completely stopped sourcing petroleum from the Plaintiff by June 2021. In further violation, the Defendant

rebranded the station under the name “Otogas,” a third-party unknown to the Plaintiff. These breaches have caused the Plaintiff losses amounting to Kshs. 27,120,000, which continue to accrue. Given that the Plaintiff relies on licensing agreements such as this for its operations, it argues that failure to grant the present application will expose it to irreparable financial harm.

5. The Defendant did not file any response despite having been served with the Application as evidenced by the Affidavit of Service of **Jairus Nduru** sworn on 7<sup>th</sup> January 2025.

### **Issues for determination**

6. The Court has taken into consideration the submissions by the Applicant and frames a single issue for determination as follows;

*a) Whether a mandatory injunction should issue against the Defendant.*

### **Analysis**

7. It is trite law that for an interlocutory mandatory injunction to issue, an Applicant must demonstrate the existence of

and special circumstances. The Court of Appeal in **Shariff Abdi Hassan v Nadhif Jama Adan [2006] eKLR** restated the position on mandatory injunction as follows: -

***“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”***

8. Similarly, in **volume 24 Halsbury’s Laws of England, 4<sup>th</sup> Edition, paragraph 948**, the learned authors state as follows:

***“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff.... a***

***mandatory injunction will be granted on an interlocutory application.”***

**a) Whether a mandatory injunction should issue against the Defendant.**

9. The Applicant submitted that special circumstances exist to justify the grant of a mandatory injunction. It stated that, as at the time of filing the Application, it had already suffered loss of profits amounting to Kshs. 27,120,000/= . That these losses continue to accrue and pose serious financial challenges to the Applicant in meeting obligations such as rent and employee salaries. The Applicant added that the Respondent, on the other hand, continues to benefit from its breach of the agreement by operating the station under another brand, “Otogas,” thereby unjustly enriching itself. The Applicant further loses potential reinvestment opportunities from the anticipated profits, and in the interests of justice, urges the Court to grant the orders sought.
10. Granting a mandatory order or injunction may have the effect of bringing the litigation to an end at the interlocutory

stage. For this reason, Courts have been reluctant to grant mandatory injunctions at the interlocutory stage and the same will only be granted exceptionally and in the clearest of cases. The Court of Appeal in the case of **Magnate Ventures Limited v Eng Kenya Limited, [2009] KLR 538**, held that a mandatory injunction could issue at an interlocutory stage if the case was;

***“a) clear and one which the court thought it ought to be decided at once, or  
b) if the act done was a simple and summary one which could be easily remedied,  
c) or if the defendant attempted to steal a march on the plaintiff.”***

11. The Court notes that the circumstances of this case are not clear and cannot therefore be decided at once. The Court has to determine the breach by the Defendant, and a cursory glance at the contract produced by the Applicant herein shows that the said contract was not executed. The Court would therefore have to receive proof by way of evidence that there was indeed a contract and it was breached by the Defendant. The first hurdle of proving a

prima facie case, this being a case seeking an injunction has not been met. It is therefore necessary for the Court to hear the parties.

12. The upshot is that the Court finds that this is not a clear case for the grant of a mandatory injunction. The Application fails.

13. As to costs, there will be no orders as to costs as the application is not opposed.

**Determination**

14. The Plaintiff's Application by way of a Notice of Motion dated 20<sup>th</sup> December, 2022 is dismissed for lack of merits.

15. There be no orders as to costs.

16. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS  
09<sup>TH</sup> DAY OF OCTOBER, 2025.**

**NJOROGE BENJAMIN K.  
JUDGE**

In the presence of;

Miss Were for the Plaintiff/Applicant.

Mr. Kuria for the Defendant/Respondent

Mr. Peter Wabwire -Court Assistant

