

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMM NO. E022 OF 2025**

FOUR BY FOUR SOLUTIONS LIMITED .....  
.....PLAINTIFF

-VERSUS-

MESHACK MUTINDA MULI.....DEFENDANT

**RULING**

1. The plaintiff filed a Notice of Motion application dated 17<sup>th</sup> January 2025 under the provisions of Sections 7 of the Trade Marks Act, Order 40 Rules 1(a), 2(1) & (2), 4 (1), (2) & (3), & 8 and Order 51 Rule 1 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 defendant and his agents from marketing, selling, passing off, or otherwise infringing on the plaintiff's registered Trademark CARSTORE, 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 affidavits sworn on 17<sup>th</sup> January 2025 & 20<sup>th</sup> March 2025 by Mr. Felix Sing'oei Limo, the plaintiff's Director. Mr. Limo averred that the plaintiff is a reputable car dealer in Kenya, trading under Trademarks, including CARSTORE, which is duly registered and has over the years built significant goodwill, market share, and brand loyalty. He contended that the use and registration status of the trading Mark notwithstanding, the defendant has infringed and continues to infringe on the plaintiff's registered Trademark and

is passing off as the plaintiff, by illegally marketing and selling vehicles under it, including on social media.

3. Mr. Limo asserted that the plaintiff's goodwill, reputation and market share has suffered irreparable harm and risks further damage if the defendant is not restrained. He averred that despite being served with this Court's Order restraining him from infringing on the plaintiff's Trademark, the defendant has continued to infringe on the CARSTORE Trademark. For that reason, Mr. Limo stated that the defendant is a fraudster with a record of conmanship, misusing the plaintiff's Trademark in fraudulent car deals, as evidenced by social media posts. He contended that no prejudice will be suffered by the defendant in the event that the orders being sought herein are granted.
4. The instant application was canvassed by way of written submissions. The plaintiff's submissions were filed on 20<sup>th</sup> March 2025 by the law firm of Kipkorir & Wanyama LLP. From the Case Tracking System (CTS) and the Court record, the defendant neither responded to the instant application nor filed any written submissions or made any oral submissions in opposition to the application.
5. Mr. Kipkorir, learned Counsel for the plaintiff relied on *inter alia*, the case of **East African Industries v Trufoods** [1972] EA 420, and submitted that the plaintiff has made out a case to warrant being granted the orders being sought herein. Counsel cited the Court of Appeal case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** [2003] KECA 175 (KLR), and submitted that in order to establish a *prima facie* case, it is sufficient to raise a genuine question on the alleged right without proving title, and the Court should avoid making conclusive findings of fact or law at this stage. Counsel submitted that since the plaintiff is the registered owner of the CARSTORE Trademark, it had

shown evidence of its usage of the Mark in business before and after registration and its evidence is uncontroverted. He stated that the plaintiff has established a *prima facie* case to being granted the injunctive reliefs being sought.

6. Mr. Kipkorir submitted that the defendant has unlawfully appropriated its Trademark and continues to do so despite a Court Order, showing intent to undermine this suit. He referred to the case of **Olympic Sports House Limited v School Equipment Centre Limited** [2012] KEHC 1071 (KLR), and argued that since the defendant's actions cause real harm, damages would not be an adequate remedy. Counsel further submitted that the balance of convenience tilts in favour of the plaintiff, as granting the injunction best upholds justice and the rule of law.

#### **ANALYSIS AND DETERMINATION.**

7. I have considered the application herein, the grounds on the face of it, as well as the affidavit filed in support thereof and the written submissions by Counsel for the plaintiff. The issue that arises for determination is whether the plaintiff has made out a case to warrant being granted an order of temporary injunction.
8. Interlocutory injunctions are provided for under Order 40 Rules (1)(a) and (b) of the Civil Procedure Rules, 2010, which states 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.***

9. In the case of **Giella v Cassman Brown & Company Limited** [1973] E.A. 360, the Court laid out the conditions applicable in applications for 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.***

10. The plaintiff has demonstrated that it is a reputable car dealer in Kenya, operating under Trademarks including CARSTORE, which is duly registered. It averred that over time, it has developed substantial goodwill, market share and brand loyalty, but the defendant has infringed and continues to infringe upon the said Trademark by unlawfully marketing and selling vehicles under the same Mark, including on his social media, as evidenced by the annexures to the plaintiff's affidavit in support of the application herein. The plaintiff has also established that despite being served with this Court's Order restraining further

infringement, the defendant has persisted in infringing on the CARSTORE Trademark.

11. 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.*

12. Having demonstrated ownership of the impugned Trademark and shown that the defendant is using it without the plaintiff's consent for his own benefit, with no intention of ceasing such use or showing any remorse, I am satisfied that the plaintiff has demonstrated a *prima facie* case with a likelihood of success to warrant being granted an order of interlocutory injunction.
13. On the issue of damages, the plaintiff averred that as a result of the defendant's actions, its goodwill, reputation and market share have suffered irreparable harm and remain at risk of further damage if the defendant is not restrained. It further averred that the defendant is misusing its Trademark in fraudulent motor vehicle transactions, thereby exposing unsuspecting members of the public to deception while tarnishing the plaintiff's name and reputation. In the case of

**Olympic Sports House Limited v School Equipment Centre Limited** (supra), cited by the plaintiff's Counsel, the Court in dealing with an application for injunction in respect to infringement of a Trademark held that -

*In the present case, I believe that the Defendant is in breach of Section 7 of the Act. Even if it can compensate the Plaintiff with damages, I hold the view that an injunction should still issue to restrain the continued breach of the law. I therefore do not need to address the issue as to whether damages are adequate.*

*However, if my view was to be sought, I hold the view that it would be very difficult to quantify the damages the Plaintiff will suffer as a result of the continued infringement of its trademark. Trade marks as are patents, are properties that should be constitutionally protected. To quantify the loss of their invasion is quite difficult and therefore hold that damages will not be an adequate remedy to compensate the Plaintiff.*

14. This Court notes that despite being served with an injunctive Order restraining him from further infringement, the defendant has shown his unwillingness to comply by not responding to the instant application. The said conduct demonstrates persistence in infringing the Trademark in defiance of a Court Order, thereby heightening the risk of loss of goodwill, consumer confusion, and reputational harm. In the premise, I concur with the position taken in the above case, and hold that loss of goodwill, reputation, and customer trust is not readily quantifiable in monetary terms.
15. It is my finding that the plaintiff has sufficiently demonstrated that it stands to suffer irreparable injury in the event that the instant application is not allowed.

16. In light of the foregoing, and having found that the plaintiff has established a *prima facie* case with a probability of success and demonstrated that it stands to suffer irreparable injury, I am satisfied that the balance of convenience also tilts in its favour.
17. The upshot is that the application herein is merited. It is hereby allowed in the following terms –
- i) I hereby grant an order of temporary injunction restraining the defendant and his agents from marketing, selling, passing off, or otherwise infringing on the plaintiff's registered Trademark CARSTORE, pending the hearing and determination of this suit; and**
  - ii) Costs of the instant application shall be borne by the defendant.**

It is so ordered.

**DELIVERED, DATED and SIGNED at NAIROBI on this 31<sup>st</sup> day of October 2025. Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Mr. Michael Wanyama h/b for Mr. Kipkorir for the plaintiff/applicant

No appearance for the defendant/respondent

Ms B. Wokabi – Court Assistant.