

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT**  
**NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**HCCC E263 OF 2025**

[Coram: Gikonyo ]]

**ROYAL MABATI FACTORY  
LIMITED.....PLAINTIFF**

**VERSUS**

**SIMON BARAZA.....1<sup>ST</sup>  
DEFENDANT**

**SAMUEL KARANJA**

**alias ALEX MUHIA.....2<sup>ND</sup>  
DEFENDANT**

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**RULING**

**Infringement of trade mark**

1. The plaintiff filed the notice of motion dated 7.4.2025, mainly under **Order 40 of the Civil Procedure Rules**, seeking the following orders: -

**(4) an order of temporary injunction to restrain the defendants or agents from using the trademark name “Royal Mabati Factory Limited” or any variations of the**

said name as well as the Plaintiff's logos and icons pending the hearing and determination of this suit;

(5) an order of temporary freezing against the Mpesa Pay Bill No. 300067 and Account Numbers 725735082, 724056544 and 707259964 and any other Mpesa account number currently in use by the Defendants; prohibiting any and all dealings with the money in the account by the Defendants, their agents, nominees or any person claiming any right of interest under or through them.

(6) the OCS, Mlolongo police Station be directed to enforce the orders of this Court.

2. The application is premised on the grounds outlined in its body and the supporting affidavit sworn by the applicant's finance manager, **CALEB OCHIENG APONDO** on 7.4.2025.

3. The applicant is the registered owner of the trademark Royal Mabati Factory Limited under the Trademark Registration No. 133966 pursuant to the Certificate of Registration issued on **2<sup>nd</sup> September 2015** and renewed on **6<sup>th</sup> June 2024** by the Registrar of Trademarks.
4. The applicant instituted this suit through a plaint dated 2.4.2025 claiming that the defendants are unlawfully and fraudulently using the plaintiff's trademarked name and/or its variations, logos and icons with the intention of misleading and defrauding the plaintiff's customers.
5. The applicant contended that the defendants' repeated trademark infringement is causing dilution and irreparable damage to its business because the defendants are confusing, misleading, misdirecting and taking unfair commercial advantage of its goodwill and

reputation by creating the impression that there exists a connection between its business and the accounts complained of, which is not the case.

6. The applicant asserted that if the injunctive orders sought herein are not granted, a significant risk of further deception and continued swindling of innocent and unsuspecting clients is likely to happen thereby occasioning it substantial and irreversible financial and reputational loss. That the harm occasioned by the repeated infringement cannot be remedied by way of damages.
7. Despite service, there was no response filed by the respondents.

### **ANALYSIS AND DETERMINATION**

8. The request before me is for an injunction to stop infringement of trademark. This is a matter of intellectual property rights.

9. Thus, the court should be concerned with the protection of the rights. Therefore, the justice of the case should depend on the circumstances of the case whilst asking the traditional questions or principles for the grant of a temporary injunction established in **Giella v Cassman Brown (1973) EA 358**. To wit: whether the applicant has established a prima facie case with a probability of success, irreparable injury that cannot be compensated by damages if the injunction is not granted, and in case of doubt, that the balance of convenience tilts in its favour.

10. A prima facie case is one which, on evidence presented, establishes that a right exists which has apparently been infringed by the opposite party. **Mrao Ltd v First American Bank of Kenya Ltd & 2 others**

11. But, a necessary caution 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."

**Nguruman Limited v Jan Bonde Nielsen & 2 Others the Court of Appeal**

12. From a careful review of the material presented, I am satisfied that the plaintiff has established that it is the owner of the registered trademark in issue which has been infringed by the defendants. Thus, an infringement of their intellectual property right has occurred. Accordingly, prima facie for grant of an injunction.

13. Further, it has been established that the infringement of their intellectual property right shall occasion irreparable harm upon them unless an injunction is issued.

14. The infringement is said to have occurred for some time and is continuing, hence, the necessity for the freezing order and the police to enforce the order.

15. Therefore, the relief that commends itself to me is to grant an injunction, freezing order as well as enforcement order by the police.

16. As a consequence, the application dated 7.4.2025 is allowed in the following specific terms: -

**(1) An order of temporary injunction is hereby issued to restrain the defendants or agents from using the trademark name “Royal Mabati Factory Limited” or any variations of the said name as well as the Plaintiff’s logos and icons pending the hearing and determination of this suit;**

**(2) An order of temporary freezing against the Mpesa Pay Bill No. 300067 and Account Numbers 725735082, 724056544 and 707259964 in use by the**

**Defendants; prohibiting any and all dealings with the money in the account by the Defendants, their agents, nominees or any person claiming any right of interest under or through them.**

**(3) The OCS, Mlolongo police Station is hereby directed to enforce order (1) of the orders of this Court.**

**Dated, signed and delivered through  
Microsoft Teams online application this  
23<sup>rd</sup> day of October, 2025**

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**F. Gikonyo M**

**Judge**

**In the presence of:**

Ms. Nasimiyu for plaintiff

N/A by defendant

CA Kinyua