



Steyn (Suing as the Legal Representative of Hermanus Phillipus Steyn) v Gnechi-Ruscione (Civil Suit 291 of 2013) [2025] KEHC 15413 (KLR) (Commercial and Tax) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 291 OF 2013
FG MUGAMBI, J
OCTOBER 31, 2025**

BETWEEN

MARTIN RICHARD STERYN APPLICANT

**SUING AS THE LEGAL REPRESENTATIVE OF HERMANUS PHILLIPUS
STEYN**

AND

GIOVANNI GNECCHI-RUSCONE RESPONDENT

RULING

Background and Introduction

1. By an application dated 29th July 2025, the applicant seeks a Mareva injunction to prevent the respondent from disposing of, alienating, or in any way diminishing the value of the property situated at 169 Mlima Road, Karen, known as Land Reference Number 2327/70 (the Karen property). The injunction is sought both pending the inter partes hearing and determination of the application, and until the applicant's Bill of Costs dated 30th June 2025 is fully taxed and satisfied.
2. The application is supported by the affidavit of Martin Richard Steyn. It is his case that on 16th May 2025, the Court entered judgment in his favor, having set aside a 2007 judgment previously obtained by the respondent through deliberate fraud and misrepresentation. The applicant contends that the respondent, a foreign national who ordinarily resides outside the jurisdiction of the Court, has only one known asset within Kenya, the Karen property, which he acquired in 2016 for Kshs. 65 million.
3. Following the judgment, the applicant filed a Bill of Costs amounting to Kshs. 501,295,720/=. Although the costs have not yet been taxed, the matter is scheduled for mention on 22nd September 2025 to assess compliance with directions issued by the Deputy Registrar.



4. In the interim, the applicant discovered that the respondent had listed the Karen property for sale with two real estate agencies, thus raising concerns that the respondent may be attempting to dispose of his sole Kenyan asset. The applicant argues that unless restrained by an injunction, there is a real and imminent risk that the respondent will dissipate the property, thereby frustrating enforcement of the costs award.
5. The applicant further contends that the respondent's history of fraudulent conduct, as found by the Court, reinforces the likelihood of asset dissipation. In conclusion, the applicant seeks urgent intervention to preserve the Karen property and ensure that the costs awarded are not rendered unenforceable due to the respondent's actions.
6. The application is opposed through the respondent's replying affidavit sworn on 19th September 2025, in which he contends that the applicant's prayer for a Mareva injunction is legally untenable, premature, and amounts to an abuse of the Court process. He argues that the applicant's claim arises solely from a party and party Bill of Costs that remains untaxed, and therefore does not constitute a liquidated or enforceable debt. Without a Certificate of Taxed Costs under Section 51 of the Advocates Act, the applicant cannot claim entitlement to any specific amount.
7. The respondent confirms ownership of the Karen property, but states that it has been listed for sale since 2019 under formal agency agreements, and not in response to the recent judgment. He denies any intention to obstruct or delay execution of a decree and asserts that the property is not his sole asset within the jurisdiction.
8. He further discloses that he has been awarded costs in several related proceedings before the Court of Appeal and the Supreme Court, which remain untaxed but are expected to exceed the applicant's claimed costs. The respondent accuses the applicant of failing to make full and frank disclosure of these material facts, and argues that such suppression warrants lifting the ex parte orders and dismissal of the application.
9. The respondent maintains that there is no real risk of non-satisfaction of the applicant's untaxed costs and that it would be unjust to restrict dealings with his private property, which is valued at USD 4.5 million, based on a speculative claim. He asserts that the applicant has failed to establish a prima facie case or demonstrate irreparable harm, and that the legal threshold for a Mareva injunction has not been met.
10. He also notes that he has filed an application for stay of execution pending appeal, with a ruling expected on 3rd December 2025. Granting the applicant's application, he argues, would unjustly interfere with his constitutional right to property under Article 40 of the Constitution. He therefore urges the Court to dismiss the application with costs.

Analysis and Determination

11. Having considered the pleadings, affidavits, and submissions of both parties, the issue for determination is whether the applicant has met the threshold for the grant of a Mareva injunction.
12. The Halsbury Laws of England 3rd Edition Vol. 3 [1] page 329 to 331 defines a Mareva injunction as:

“An order of the court restraining a party to proceedings from removing from the jurisdiction of the court, or otherwise dealing with assets, located within that jurisdiction and in more limited circumstances from dealing with assets located outside, the jurisdiction.”



13. On the purpose and application of Mareva injunctions, I reiterate as I did in *Zakhem International Construction Limited V Oilfields Engineering and Supplies Limited & Another*, [2023] KECA 1665 (KLR), the finding by Lord Denning in the locus classicus case of *Mareva Campania Naviera SA V International Bulkcarriers SA*, [1980] 1 All E.R. 213. It was stated as follows at page 215:

“... that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets.”
14. What stems from the above discourse is a reaffirmation of the Mareva injunction’s unique character as a pre-emptory and preventive remedy. The issue is whether the injunction can issue post judgment. I take the view that the utility of Mareva injunctions extends beyond judgment, particularly where the risk of frustrating execution looms large.
15. A similar intention is expressed of injunctive reliefs under the Civil Procedure Rules. Order 40 Rule 1(b) of the Civil Procedure Rules empowers the court to issue an injunction: “for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property pending the hearing and determination of the suit or until further orders”. This language in my view, is sufficiently broad to encompass post-judgment scenarios, especially where the decree is yet to be executed or costs are pending taxation, to prevent the dissipation of assets that would frustrate enforcement.
16. The underlying policy rationale for Mareva injunctions has been consistently affirmed across numerous judicial decisions including *Uhuru Highway Development Ltd V Central Bank of Kenya & 2 Others*, [1996] eKLR. In these cases, the courts have maintained that the primary objective of a Mareva injunction is to prevent a defendant from disposing of assets in a manner that would render any eventual judgment ineffectual. It is a remedy rooted in the need to preserve the enforceability of judicial determinations and to guard against the deliberate frustration of justice.
17. Given this foundational purpose, there exists no justifiable reason to bar the issuance of a Mareva injunction after judgment but prior to the taxation of costs as in this case. The injunction retains its interlocutory character, as it is granted pending further orders, and its protective function remains wholly intact. The phrase “pending hearing and determination or until further orders” as found in Order 40 Rule 1 of the Civil Procedure Rules must therefore be interpreted purposively. Such an interpretation empowers the court to issue freezing orders even post-judgment, where there is a credible and imminent risk of asset dissipation that could defeat execution.
18. To adopt a restrictive view of the court’s jurisdiction in this regard would be to elevate procedural technicalities above substantive justice. The court must remain vigilant and proactive in ensuring that its judgments are not rendered hollow by strategic conduct aimed at evading enforcement. Equity demands no less, and the integrity of the judicial process depends on it.
19. In *Nanji & 2 Others V Exobi (Finance House) Ltd*, [2025] KECA 1119 (KLR) the Court of Appeal referred to a decision of this Court (Gikonyo, J), in *International Air Transport Association & Another V Akarim Agencies Company Limited & Others*, [2014] eKLR with respect to the conditions to be met before a Mareva injunction can be granted. These are namely that the plaintiff has to demonstrate that it has a good arguable case; that the claim is one over which the court has jurisdiction; that the defendant has assets within the jurisdiction; that there is a real risk that those assets will be removed



from the jurisdiction or otherwise dissipated if the injunction is not granted; and that the balance of convenience lies in favour of granting the injunction.

20. The respondent does not dispute that he is a foreign national who ordinarily resides outside the jurisdiction of this Court. While he claims to own other assets within Kenya, he has not provided any evidence to substantiate this assertion. On the contrary, he admits ownership of the Karen property and confirms that it has been listed for sale. The applicant has produced evidence of this listing, which the respondent has not denied. This confirmation strengthens the applicant's claim that the property is at risk of being disposed of.
21. It has been argued by the respondents that the party and party bill of costs filed by the applicant may ultimately be assessed at a figure significantly lower than the value of the Karen property in question. However, such an assertion remains speculative and cannot form a legitimate basis to deny the issuance of a Mareva injunction. Similarly, the costs awarded to the respondent in various proceedings remain untaxed and therefore, uncertain in quantum. In the absence of any alternative security being offered by the respondent, the court is left with no viable safeguard against the risk of asset dissipation.
22. The threshold for the grant of a Mareva injunction, as reaffirmed in *Nanji & 2 others (supra)*, requires a credible claim and a real risk that the defendant may dispose of assets to frustrate enforcement. I am satisfied that the applicant has met this threshold, and in the interests of preserving the efficacy of the judicial process, the injunction must issue.

Disposition

23. Accordingly, the application dated 29th July 2025 is allowed. The applicants shall have the costs of the application having been successful.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2025.

F. MUGAMBI

JUDGE

