

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. E265 OF 2024**

**FELICITY SOLAR TECHNOLOGY KENYA LIMITED....1<sup>ST</sup>**

**PLAINTIFF**

**ZOU WEIQIANG .....2<sup>ND</sup>**

**PLAINTIFF**

**=VERSUS=**

**VICTOR MUNENE KIBET.....1<sup>ST</sup>**

**DEFENDANT**

**FELICITY SOLAR KENYA LIMITED.....2<sup>ND</sup>**

**DEFENDANT**

**FELICITY SOLAR KENYA MOMBASA LIMITED.....3<sup>RD</sup>**

**DEFENDANT**

**EMPOLO KENYA LIMITED.....4<sup>TH</sup>**

**DEFENDANT**

**RULING**

1. This ruling is on the Plaintiffs' Application dated 6<sup>th</sup> December 2025. By which the Plaintiffs are seeking a mandatory injunction as well as a prohibitory injunction. The Application is supported by the Supporting Affidavit of the 2<sup>nd</sup> Plaintiff who is also a director of the 1<sup>st</sup> Plaintiff. The Affidavit was sworn on 6<sup>th</sup> November 2024.
2. The Application which has stated that it is invoking the provisions of Order 39 Rules 1 and 2 as well as Order 40 Rules 1 and 2 of the Civil Procedure Rules, is based on the grounds stated in it; and which are that:

- (a) *That the Plaintiffs are foreign investors, while the Defendants who are Kenyan nationals and entities are using intimidation and Machiavellian tactics on them.*
- (b) *That the 1<sup>st</sup> Plaintiff, a company, is likely to collapse and occasion loss of business, loss of opportunities, loss of income and loss of jobs.*
- (c) *That the Defendants and the Plaintiffs entered into a contract, which the Defendants have breached.*
- (d) *That the breach occasioned the Plaintiffs' loss of over Ksh 86Million.*
- (e) *That the Plaintiffs will suffer irreparable loss unless these orders are granted.*

3. The Defendants have through their filed Response, opposed the Application. On the ground that the Application does not meet the legal threshold for the grant of the injunctions it is seeking. Namely, the mandatory injunction and the interlocutory prohibitory injunction.

4. Both parties filed written submissions, both of which I have carefully distilled. I have also read the Application (and its Supporting Affidavit), the Defendants' Response; as well as the law and legal authorities cited by the parties.

#### *Analysis and Determination*

5. While pre-trial interlocutory prohibitory injunctions are common place, mandatory injunctions are rarely issued at the pre-trial stage. They are usually issued as final orders at the end of trial (in judgments). At the onset of the suit and at the interlocutory stage, they are only issued in the

most-clear cases or in circumstances of exceptional hardship.

6. That is not the case here, and no exceptional or extraordinary hardship has been demonstrated by the Palintiffs/Applicants. What they have put forth, are lamentations and a claim for redress. For there to be an entitlement, these need to go through the rigours of trial and succeed. For now, it is their word against the Defendants' word.
7. As regards the prayer for interlocutory injunction, the facts and grounds that they have in their Application put forth in support of their plea for the injunction, do not meet the legal threshold of the three pillars restated by the then Court of Appeal for East Africa, in the celebrated case of **Giella v. Casman Brown [1973] EA 358.**
8. Which are as to the Applicant having a *prima facie* case with high chances of success; the damage that the Applicant is likely to suffer being such as cannot be adequately compensated by an award of damages; and that in case of the court being in doubt, the balance of convenience is in favour of granting the injunction.
9. I find that the Applicants have not belaboured to demonstrate how their Application meets that threshold. Instead, they have sought the injunction as a matter of course or matter of right; in the same way they have sought the mandatory injunction.
10. This Application therefore fails, and is hereby dismissed with costs.

**DATED and DELIVERED at NAIROBI on this 11<sup>th</sup> day of November 2025.**

**PROF (DR) NIXON SIFUNA  
JUDGE**