



REPUBLIC OF KENYA



KENYA LAW
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**Issenberg & another v Kinyanjui (Civil Suit 19 of 2020)
[2025] KEHC 16222 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL SUIT 19 OF 2020
CW MEOLI, J
NOVEMBER 6, 2025**

BETWEEN

SHEILA CASSATT ISSENBERG 1ST PLAINTIFF

WATOTO WORLD CENTRE 2ND PLAINTIFF

AND

ANTHONY MACHATHA KINYANJUI DEFENDANT

RULING

1. Sheila Cassatt Issenberg, the Applicant describes herself as the founder, sole donor and director of the Watoto World Centre (a company limited by guarantee, hereafter the company) operating the children center by the same name located at Kiserian and currently hosting 18 children, and which centre is at the heart of this dispute. Anthony Machatha Kinyanjui (hereafter the Respondent) is a co- director of the company and was at the filing of this suit the manager of the children centre.
2. From a perusal of the record, the dispute pitting the two directors against each other has a long and checkered history that culminated in the institution of this suit by the Applicant in September 2020 alleging various breaches by the Respondent of his duties as a director and manager of the children centre. The prayers in the plaint seek inter alia a permanent injunction to restrain the Respondent from removing the children from the children centre and for the company to be wound up.
3. Although interim orders were granted on 7.9.2020 in respect of the Applicant’s initial motion dated 19.08.2020 seeking interim injunctive orders pending the hearing of the suit, the said motion has never been heard inter partes. Instead, a multiplicity of applications by the Applicant ensued, as observed by Mutuku J in her ruling on 1.10.2024 on the two applications by the Applicant dated 14.03.2023 (seeking to bar counsel Mr. Peter Kuria from further representing the Respondent in this matter) and the contempt application dated 4.10.2023. Both motions were dismissed, the court stating with respect to the motion dated 4.10.2020 that orders issued by the court on 7.09.2020 were interim in nature



and had lapsed on 14.10.2020. The motion dated 14.10.2024 which is the subject of this ruling was apparently provoked by the Respondent's visit to the children centre, on 14.10.2024 shortly after the ruling above.

4. While this matter was proceeding as above, a criminal prosecution was mounted against the Respondent on the basis of complaints by the Applicant. The criminal case, Nairobi MCCR No. E872 of 2022 (hereafter the criminal case) was concluded via a judgment delivered by Hon. Ekhubi, SPM on 23.04.2025. The Respondent was found guilty of three offences, namely, Forgery contrary to Section 345 of the Penal Code, in relation to the company's 2018 annual report and financial statements; Uttering a false document contrary to Section 353 in relation to presentation of the said forged documents to the Ministry of Labour and Social Protection; and Concealing deeds contrary to Section 288 of the Penal Code, in relation to land parcel No. LR. Kajiado/Olchore/19888. On 14th May 2025, the Respondent was sentenced, the trial court imposing fines amounting to Kes. 200,000/- in respect of the three counts and cumulative default sentences of 4 years imprisonment.
5. The motion dated 14.10.2024 is expressed to be brought under Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 40(1)(a) of the Civil Procedure Rules . The live prayers therein seek a temporary injunction to restrain the Respondent from entering or accessing the premises of the children centre or otherwise interfering with the operations thereof pending the hearing and determination of this suit; and a temporary injunction to restrain the Respondent from acting as a director of company pending the hearing and determination of this suit.
6. The motion is premised on the grounds on its face, as amplified in the supporting affidavit sworn by the Applicant. To the effect that the suit arose from serious breaches of fiduciary duty on the part of the Respondent, which firstly jeopardized the welfare of the children at the centre which at the time hosted 18 children, most of whom had committed sponsors, and secondly the integrity of the centre's operations. Asserting that the Respondent's conduct necessitated urgent court intervention to protect the interest of the vulnerable children, she stated that pursuant to earlier interim orders, she took over the centre's management and discovered extensive damage allegedly caused by the Respondent.
7. She recounts that the children had been forcefully removed from the centre at the Respondent's request, but were later returned after intervention by government agencies. She also allegedly discovered that contrary to the requirements of her partnership agreement with the Respondent and his misrepresentations in that regard, the centre had not been registered with the Department of Children Services, and she had endeavored to restore the centre's relationship with regulatory bodies, which had deteriorated under the Respondent's tenure.
8. Alluding to the criminal case, the deponent complains that the Respondent forged her signature on statutory documents submitted to various government offices including the Department of Children Services, prompting her to file a criminal complaint. Further that a sum of Kes. 2,000,000/- which she had remitted to the Respondent for land acquisition, was not applied to that purpose and that the Respondent registered two centre properties identified as plots no. 838 and 831 in his own name and used the latter plot as collateral for a loan. And that he withheld sale agreements, removed related documents from the centre, sold a motor vehicle belonging to the centre and defaulted on a loan he had taken to finance its purchase, forcing her to settle it.
9. She further deposed that the Respondent has continued to sabotage the centre's operations, including instigating the construction of an access road through its property and explains that the lapse of the initial interim orders was not deliberate, as parties intended by their consent for the orders to remain in force until the determination of the suit. She expressed fear that in the absence of restraining orders, the Respondent may interfere with the center's operations, destroy documents, or intimidate staff and



children at the centre . She contends that the balance of convenience is in her favour and that the court should grant the orders sought.

10. A supplementary affidavit sworn by John M Kamau described as a manager employed at the centre recounts that on 19.7.2023, two adults including Peter Kuria the Respondent's advocate visited the centre under alleged instructions to conduct an inspection of the premises, but access was declined, due to the restraining court order herein. Further that on 14.10.2024 the Respondent and his Advocate attempted to unlawfully gain access into the centre.
11. A security officer at the centre, Alexander Marco Waweru by his supplementary affidavit deposed that on 14.10.2024 at 10:00am he heard loud and aggressive knocking at the gate. Whereupon he encountered two men who were strangers to him, one of whom identified himself as the director of the centre/company and asserted that he was entitled to enter the premises. He denied them access upon seeking the instructions of the centre manager. He claimed that the Respondent was disruptive and forcefully attempted to gain access into the premises.
12. The Respondent opposed the motion through his replying affidavit, dismissing the motion as scandalous, frivolous, and an abuse of court process, citing the court's ruling of 1.10.2024. Rehashing the history of the suit, he accuses the Applicant of ignoring the directive of the court to parties to progress the suit, and delaying the suit's resolution for a period of five years. All intended to give the Applicant exclusive control of the company and centre.
13. He contends that determinations in respect to the allegations of breach of his fiduciary duties must await the conclusion of the trial, and views the motion as an attempt by the Applicant to prematurely obtain final reliefs, adding that the interim orders herein, which were improperly extracted as final orders did not authorize her to eject him and take over the centre's operations. Regarding the removal of the children, he states that such decisions are made by statutory bodies upon legal assessments, and he merely complied with due process.
14. He further disputes responsibility for the failure to register the centre, attributing it to the 1st Applicant's lack of a valid work permit, which rendered her presence in Kenya illegal at the time. Taking issue with the criminal complaint filed against him, he said it came two years after his exclusion from the centre which suggested it was retaliatory. He challenges the authenticity and relevance of documents annexed to the Applicant's affidavit contending that they relate to entities or periods unrelated to the company.
15. Refuting allegations of theft and misuse of funds, he states that no evidence has been provided to support claims that the vehicle cited by the Applicant was held in trust for the centre. He dismissed the copies of bank statements exhibited by the Applicant as fabricated, the criminal charges an attempt to intimidate and hinder his defense, and claims of sabotage and disruption vague and unsupported. Here asserting that his visit to the centre was lawful and within his rights as a director and accusing the Applicant of operating the Centre unilaterally from outside the country while employing court processes to avoid scrutiny. Finally, reiterating his position as director, he refutes the contents of the supplementary affidavits .

Submissions.

16. The Applicant's submissions dated 18.7.2025 address the questions whether the motion met the threshold for the grant of a temporary injunction and the relevance of the ruling of 1.10.2024 to the present application. Citing principles settled in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 and the definition of a prima facie case in *Mrao Ltd -vs- First American Bank of Kenya and 2 others* (2003) KLR 125, counsel for the Applicant argued that a prima facie case with a probability of



success has been established. Based on evidence detailing breaches of fiduciary and statutory duties by the Respondent, some of which are currently under investigation.

17. Including fraudulent misrepresentation in land transactions, forgery of financial documents, unauthorized sale of a company vehicle, theft and destruction of records, and sabotage of donor and institutional relationships. And emphasizing the Respondent's conviction in the criminal case, relied on Section 47A of the [Evidence Act](#) to support the view that the conviction was conclusive evidence of guilt.
18. The Applicant asserts that irreparable harm will result if the Respondent is allowed access to the centre, which is a charitable institution caring for 18 vulnerable children, and that the risk of trauma, donor withdrawal, and reputational collapse cannot be compensated by damages. Here invoking Article 53(2) of [the Constitution](#), expressing that a child's best interests are of paramount importance in every matter concerning the child.
19. On the balance of convenience, it is reiterated that the Respondent has not been involved in the Centre's operations since 2020, and that preserving stability especially through trust with statutory institutions is necessary. Adding that while the Respondent will not be prejudiced by an order of injunction, the children stand the risk of significant harm if it is denied.
20. Regarding the ruling of 1.10.2024, the argument made is that it did not determine the substantive issues, whereas the present application is based on new developments, including the Respondent's visit to the premises on 14.10.2024, his criminal conviction, and ongoing investigations. The court was therefore urged to grant fresh injunctive relief grounded in the new facts and legal foundation.
21. The Respondent on his part equally anchored his submissions on the principles enunciated in *Giella - vs Cassman Brown* [supra] as reinforced in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [supra] eKLR. Citing the definition of a prima facie case as spelt out in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [supra], counsel posits that the Applicant failed to demonstrate from her pleadings a right which is directly threatened and instead relies on a criminal conviction that is under appeal.
22. Counsel challenged the use of Section 47A of the [Evidence Act](#) in that regard, stating that due to the subsequent pending appeal, the Respondent's conviction cannot be treated as conclusive proof of guilt. He also objected to the introduction of this new evidence through submissions rather than by way of affidavit. And cited authorities, including *Balozi Housing Co-operative Society Limited v Captain Francis E K Hinga* [2012] eKLR.
23. Once more, counsel referenced the case of *Nguruman* (supra) for the proposition that a temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages, rather than a speculative injury, such as alleged possibility of trauma and disruption herein asserted by the Applicant.
24. On the balance of convenience, the Respondent relied on the case of *Chebii Kipkoech v Barnabas Tuitoek Bargarora & Another* [2019] eKLR where it was stated that a successful applicant must demonstrate that the inconvenience, which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it. Reiterating here that the Applicant has exercised exclusive control over the centre for five years, and prevented the Respondent from executing his duties as director, he stated that this kind of obstruction undermines statutory obligations including filing of annual returns, financial oversight, and decision-making especially due to the



Applicant's frequent absence from Kenya. In conclusion, the Respondent urges the court to dismiss the application which he terms as scandalous, vexatious, and frivolous and liable for striking out.

Analysis and Determination

25. Before considering the merits of the motion dated 14.10.2024, the court proposes to address the status of the motion dated 19.08.2020. As earlier observed, that motion was never heard inter partes, and has hitherto been overshadowed by subsequent applications. There were 7 prayers in the motion, six of them seeking a variety of temporary injunctions against the Respondent with regard to the running of the centre and dealings with certain company properties. The motion was based on allegations inter alia of impropriety on the part of the Respondent in his role as director of the company and manager of the centre.
26. On 7.09.2020 when the parties appeared before Mwita J, a consent was recorded to the effect that prayers 2,3, and 4 of the motion dated 19.08.2020 were “granted until 14.10.2020”, by which date the second application dated 18.09.2020, seeking that the Respondent be cited and punished for contempt of court, had been filed by the Applicant. Therein alleging disobedience of the consent orders by the Respondent. It would appear, as Mutuku J found in her ruling of 1.10.2024, that the orders extracted and signed by the Deputy Registrar of this court pursuant to the consent of 7.09.2020 erroneously purported to subsist until the hearing and determination of the suit.
27. Be that as it may, by a ruling dated 2.07.2021, Mwita J dismissed the contempt application. Nothing more was heard concerning the initial motion until a further contempt application dated 4.12. 2023 was filed. It is undeniable that there was bound to be confusion occasioned by the tenor of the extracted consent orders of 7.09.2020, but this issue was never raised with the court, even as parties subsequently canvassed the contempt motion before Mwita J. The ruling of Mutuku J of 1.10.2024 eventually settled the question whether the said consent orders were subsisting after 14.10.2020.
28. Following that ruling, the Applicant, instead of prosecuting the initial motion chose to file the present motion, which on the face of it, arose from the Respondent's visit to the centre on 14.10.2024 seeking access thereto. It would seem therefore that the Applicant has abandoned the initial motion dated 19.08.2020, electing instead to file other subsequent applications as the dispute between her and the Respondent has evolved. The argument by counsel for the Applicant that the initial motion and present motion arise from different circumstances only confirms this fact. The court takes exception to this kind of conduct, which borders on abuse of the process of the court. In the circumstances, the court will deem the motion dated 19.08.2020 as abandoned and spent.
29. Now returning to the motion dated 14.10.2024, the court has considered the rival material canvassed in respect of the motion, and the sole question to be determined is whether the Applicant has brought her case within settled principles that govern the grant of temporary injunctions. The court's power to grant temporary injunctions is donated by Order 40 Rules 1 and 2 of the Civil Procedure Rules. The now settled principles governing the grant of interlocutory injunctions were spelt out in *Giella v Cassman Brown & Co. Limited* [1973] EA 358 [supra] were reiterated in *Nguruman Limited* (supra).
30. The latter decision is particularly illuminating. In that case, the Court of Appeal described the role of the court in an application seeking temporary injunction to be merely to consider whether the principles for the grant of the interlocutory injunction were met. The Court further observing that:

“...Since the fundamentals about the implications of the interlocutory orders of injunctions are settled, at least over four decades since *Giella's* case, they could neither be questioned nor be elaborated in detailed research. Since those principles are already by authoritative pronouncements in the precedents, they may be conveniently noted in brief as follows:



In an interlocutory injunction application, the Appellants has to satisfy the triple requirements to:

- a. establish his case only at a prima facie level
- b. demonstrate irreparable injury if a temporary injunction is not granted.
- c. allay any doubts as to (b) by showing that the balance of convenience is in his favor.”

31. The Court explained that the three conditions above apply separately as distinct and logical hurdles to be surmounted sequentially by an applicant. Such that, it was not enough for the applicant to establish a prima facie case, they must further successfully establish irreparable injury, that is, injury for which damages recoverable at law could not be an adequate remedy. And where there is doubt as to the adequacy of damages, the Court will consider the balance of convenience. Conversely, where no prima facie case is established, the court need not consider irreparable injury or the balance of convenience. The Court of Appeal emphasized that the standard of proof is to prima facie standard.

32. In the case of *Mrao Limited v First American Bank of Kenya and 2 Others* (2003) KLR 125[*supra*], the Court of Appeal defined what amounts to a prima facie case as follows:

“A prima facie case in a civil case includes but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude 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.”

33. In demonstrating a prima facie case, the Applicant relied on the visit to the centre by the Respondent on 14.10.2024 demanding to be allowed into the centre, thereby posing a risk of disruption at the centre hosting vulnerable children. She further described a litany of alleged breaches of fiduciary duty on the part of the Respondent, including fraudulent misrepresentation, forgery, theft of institutional property, and sabotage of donor and relationships with regulatory bodies. Further the undisputed conviction of the Respondent in the criminal case for the offences of forgery, uttering false documents, and concealing title deeds, all of which relate to his duties as director of the company and as manager of the centre.

34. The Respondent admits the visit on 14.10.2024 to the centre and maintains that as an incumbent director of the company he was entitled to do so, and to participate in the affairs of the centre. As regards allegations of impropriety against him, he contends that these issues must await the trial before final determination on evidence, and ought not to be dealt with at interlocutory stage, as proposed by the Applicant. While stating that under Section 47 A of the *Evidence Act* the finding of guilt is not conclusive until the Respondent’s appeal is determined, he did not dispute his conviction in the criminal case.

35. It is undisputed that since the order of 7.09.2020, the Respondent has not been actively involved in the role of director of the company and as manager at the children centre, and it appears that his visit on 14.10.2024 came on the heels of the decision of Mutuku J of 1.10.20224. Undeniably, while there is an intense tussle ongoing between the Applicant and the Respondent as directors of the company, at the heart of the conflict is a centre hosting 18 vulnerable children. The Applicant’s case is that given the



alleged breaches on the part of the Respondent in his role as director, his further access to the centre and carrying out directorship duties will not only disrupt the operations of the centre but also adversely impact upon the children at the centre.

36. It is important to highlight that from material before the court, the conflict between the directors revolves around the centre. Given the nature of institution, namely the children centre, at the heart of the contention between the company directors, the court is inclined to agree with the Applicant's submission that this motion must be considered with the provisions of Article 53 (2) of *the Constitution*, as well as the *Children Act* in mind.
37. The former provision states, "A child's interests are of paramount importance in every matter concerning the child". Flowing from the above provision, Section 8 of the *Children Act* provides as follows:

"Best interests of the child

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
 - (a) the best interests of the child shall be the primary consideration;
 - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
- (2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
 - (a) safeguard and promote the rights and welfare of the child;
 - (b) conserve and promote the welfare of the child; and
 - (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
- (3) In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
- (4)"

38. A reading of the supplementary affidavits sworn with regard to the events of 14.10.2024 reveal apprehension and potential for open conflict, or disruptions at the centre if the Respondent was to force himself into the premises, or was allowed access. It is conceivable that such eventuality would cause unnecessary tension and alarm especially for the children at the centre. The Respondent's material before the court evinces every intention to reinstate himself at the home to reclaim his position as director and manager of the centre. The animosity between the directors displayed here is palpable, and it cannot serve the interests or welfare of the vulnerable children at the centre to be caught up in open conflict or contention. The potential for such open conflict is real if rival parties purport to be "in charge" of the centre.



39. Besides, while it may be correct to say that the myriad accusations laid at the feet of the Respondent will have to await the trial herein, it is undisputed that the Respondent has been convicted for offences concerning his role as director-cum-manager running operations at the centre, all tending to cast a shadow on his suitability to continue in the said role. I state this advisedly. Notwithstanding the provisions of Section 47 A of the *Evidence Act* and the fact that the convictions are currently being challenged on appeal, for the purposes of this case, all that needs to be demonstrated is prima facie case.
40. As stated in Nguruman (supra), the role of the court at this stage, is not to conduct a mini trial, but merely to consider whether the principles for the grant of the interlocutory injunction were met. In the court's assessment, a prima facie case has been made out. Equally, the likelihood of irreparable injury has been demonstrated: no amount of damages in this case could be adequate compensation if chaos were to erupt at the centre or the children destabilized or in the worst case scenario, peremptorily removed from the home.
41. The Applicant has also claimed, without supplying proof, that the Respondent had conspired to have a road constructed through the centre premises. I will say no more, save that the balance of convenience clearly lies in maintaining the status quo obtaining since the orders of 7.09.2020 to allow peace, stability and equilibrium as the suit is heard to conclusion. Because of the vulnerability of the children at the centre, and in view of the relevant constitutional imperative in that regard, the dispute herein goes beyond the parochial personal stakes of the two warring directors; the public interest element looms large. That being the case, the Court deprecates the fact that the Applicant has filed a multiplicity of applications while not taking concrete steps to perfect the matter for trial.
42. In the circumstances, the court is persuaded to grant the motion dated 14.10.2024 in the following terms:
1. A temporary injunction is hereby issued to restrain the Respondent from entering or accessing the premises of Watoto World Centre or directly or indirectly or in any manner whatsoever, interfering with the workers and operations at Watoto World Centre pending the hearing and determination of this suit.
 2. The above order will remain in force for a period of 12 months from today's date (excluding the period between 20th December 2025 and 14th January 2026 when time does not run).
 3. Due to its potential ramifications on the welfare of children at the centre, this suit ought to be expeditiously determined.
 4. Parties will bear their own costs in the motion.
43. At the same time, the court having reviewed the material before it is persuaded that with effective mediation, the warring parties herein can resolve the dispute in a manner that does not adversely affect the welfare of the children at the centre, which, ostensibly brought them together in the first place. In the circumstances, the court will make the following orders:
1. The court moving itself suo motu hereby refers this case to the court annexed mediation and the Deputy Registrar of this Court shall ensure that a mediator is immediately appointed, and the parties notified.
 2. In order to safeguard the interests of the children at the centre, the court directs that the Children Officer Kajjado West where the children centre is located shall fully participate in the said mediation process to render necessary guidance and input.
 3. The mediation process should be completed within 60 clear days.



4. The matter will be mentioned before the Deputy Registrar 15th January 2026 to confirm compliance with the above orders and or rendering of the mediator's report.
5. In the meantime, the parties shall complete compliance with Order 11 of the Civil Procedure Rules, starting with the Plaintiffs, within 14 days of today's date and thereafter the Respondent in equal time.

DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 6TH DAY OF NOVEMBER 2025

C.MEOLI

JUDGE

In the presence of:

For the Applicant: Dr. Musau and Ms. Musau

For the Respondent: Mr. Kuria

C/A: Lepatei

