Orango & 2 others v Dynamic Chemicals Limited (Commercial Case E235 of 2025) [2025] KEHC 15983 (KLR) (Commercial and Tax) (6 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15983 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE E235 OF 2025

AA VISRAM, J

NOVEMBER 6, 2025

BETWEEN

MARGARET MITHIRI ORANGO ..... 1ST PLAINTIFF

STRONGBOND ADHESIVES LIMITED ..... 2ND PLAINTIFF

JOEK COMPANY LIMITED ..... 3RD PLAINTIFF

AND

DYNAMIC CHEMICALS LIMITED ..... DEFENDANT

RULING

Introduction and Background

1. By an application dated 13th March, 2025, the Plaintiffs seek an interlocutory injunction to restrain the Defendant from manufacturing, selling, distributing, or otherwise dealing in products that allegedly infringe the Plaintiffs' trademark or pass off their goods as the Plaintiffs' until this suit is determined. They also seek permission to enter the Defendant's premises to seize all infringing products, advertising materials, and sales records from the past 12 months and for the police to assist in enforcing the said seizure order.

2. The application is supported by the affidavits of the 1st Plaintiff sworn on 13th March, 2025 and 1st October, 2025 and opposed by the Defendant through the replying affidavit of its director, Violet Ong'ayi, sworn on 2nd September, 2025. The application was canvassed by way of written submissions which I have considered and I will be making relevant references to in my analysis and determination below.

Analysis and determination

3. I have considered the Application, the reply and the rival submissions. The main issue for determination is whether the court ought to grant the injunctive orders sought by the Plaintiffs. For them to obtain an injunction, they must demonstrate that they have a prima facie case with a probability of success, demonstrate irreparable injury that may not be compensated by an award of damages if a temporary injunction is not granted; and if the court is in doubt as to whether the above criteria has been met, demonstrate that that the balance of convenience is in their favour (See Giella v Cassman Brown & Co., Ltd. [1973] E.A. 358). In Nguruman Limited v Jan Bonde Nielsen& 2 others [2013] KECA 347 (KLR). The Court of Appeal reiterated these conditions and further clarified that they are to be applied as separate, distinct and logical hurdles which an Applicant is expected to surmount sequentially. This means that if the Applicant does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions.

4. As to what constitutes a prima facie case, the parties have rightly submitted that the Court of Appeal in Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR) explained that 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 to call for an explanation or rebuttal from the latter." The Plaintiffs' case is that the 1st Plaintiff is the original registered owner of the trademark "Strong Bond Black Leather Dye" (No. 124320), which she later assigned to the 2nd Plaintiff. They claim that the Defendant is manufacturing and selling a product under the identical name "Strong Bond Black Leather Dye," with packaging that is confusingly similar to the Plaintiffs' product in terms of name, logo, bottle shape, and color scheme.

5. The Plaintiffs deposed that they have already lodged a formal complaint with the Anti-Counterfeit Authority, which conducted a raid on the Defendant's premises and seized infringing materials and that a related criminal case is ongoing. That despite the complaint and raid, the Defendant continues its illegal activities, causing ongoing harm to the Plaintiffs' sales, market share, and brand reputation and claim that the Defendant's lower pricing and alleged substandard quality further damage the Plaintiffs' commercial interests and goodwill. The Plaintiffs submit that without court intervention, the Defendant will continue its actions unrestrained, causing significant and irreparable injury to their business.

6. In response, the Defendant presented itself as a legitimate chemical manufacturer operating under its own registered trademark "DYMAJIC" and it asserted that it has never claimed ownership or used the "Strong Bond" trademark. The Defendant admitted a connection to the premises where infringing activities occurred, but framed the relationship as merely a one of landlord-tenant. It submitted that it was a third party to the dispute and that it simply sublets part of its premises to the infringing party, if any, for monthly rent. The Defendant deposed that the lease agreement explicitly stated the third party would carry out his activities independently, and the Defendant disclaimed any liability arising from the activities conducted by the tenant.

7. The Defendant submitted that it had no knowledge of any trademark dispute between the third party and the Plaintiffs, and the Defendant accused the Plaintiffs and the Anti-Counterfeit Authority of causing significant disruption and financial loss to it arising from the unlawfully seizing of equipment and materials used for the Defendant's legitimate "DYMAJIC" manufacturing operations during the said raid.

8. It argued that a landlord who provides workspace in good faith cannot be held liable for a tenant's independent business activities or trademark disputes, and it contended that the Plaintiffs have no legal basis for their claims against the Defendant because it never infringed their trademark, has not claimed it; and operates under its own distinct brand. The Defendant stated in short, that the Plaintiffs' proper recourse is to pursue their claims directly against Mr. Kioko Mutiso, the actual tenant and not it.

9. I have considered both versions of events. It is not in dispute that the 1st Plaintiff is the registered owner of the "Strong Bond" trademark; and that a raid on the Defendant's premises resulted in confiscating infringing materials found during the course of the raid. The same were duly seized and were examined. The said products in my view, by way of a plain reading and ordinary examination of the same, bear the identical name "Strong Bond Black Leather Dye," and further is confusingly similar to the Plaintiffs' product in terms of name; logo; bottle shape; and colour scheme.

10. Whereas the Defendant claimed that the said infringing products are being manufactured by a third - party tenant, who had sub-let its premises, no explanation has been provided as to why the infringing products bear the name of the Defendant, or why the invoices seized and produced in the further affidavit bear the name of the Defendant issuing the invoice, and reflect sales of the product under the brand name owned by the Plaintiffs. I am therefore not persuaded that the Defendant is merely a land lord, and a stranger to activities carried out by its tenant. If that explanation was credible, the invoice and products would have been marked with the name of the tenant and not the Defendant. This is not the case. Therefore, I find that the "innocent landlord" explanation has not been sufficiently demonstrated at this stage of the proceedings.

11. Additionally, it is not lost on me that the Anti-Counterfeit Authority initiated a criminal case against the Defendant, and not the tenant for the infringing products. The prosecution of the case together with the seizure of the evidence exhibited as part of the record, while not determinative, at this stage is sufficient to make out a prima facie case for the orders sought by the Plaintiff. The evidence presented includes: inventory and invoices from a test purchase showing that the Defendant sold the products with the Plaintiffs brand.

12. As regards the second limb of the test, namely, whether the Plaintiffs stand to suffer irreparable harm that may not be compensated by damages, the answer is in the affirmative. The Defendant's continued manufacturing and sale of the Plaintiffs' products at lower standard and price are likely to affect the Plaintiffs' market share, goodwill, reputation, and revenue which over a long period of time may no longer be quantifiable.

13. Having found that the above criteria have been met, there is no reason for me to address the question of balance of convenience.

14. Finally, the Plaintiffs did not submit in respect of the applicable criteria to warrant the grant of an Anton Piller order which they have prayed for. Nonetheless, based on the evidence before the court, I have considered whether the prayer is merited based on the principles set out in the English case of Anton Piller KG v Manufacturing Processes Ltd and Others [1976] Ch 55, (a decision of the Court of Appeal (Lord Denning MR, Ormrod and Lawton LJJ)).

15. In the said case, the court recognised the power of the court to make an order permitting the Plaintiff to enter the Defendant's premises to inspect and remove items, such as documents or materials, to prevent their destruction. It was, however, described as a drastic remedy, only to be granted in exceptional circumstances. The court set out three essential conditions for the grant of such an order: First, an extremely strong prima facie case demonstrated on the on the merits. This was held to be a higher standard than the ordinary requirement for an interlocutory injunction, given the intrusive nature

of the order. Second, a very serious actual or potential damage: The presence of either potential or actual damage to the Applicant must be very serious if the order is not granted. The same was said to usually arise in cases involving trade secrets, copyright, patents, or confidential information where the Defendant could easily destroy or conceal the evidence. Finally, clear evidence of possession and risk of destruction: The court held that there must be clear evidence that the Defendant has in their possession, incriminating documents, or material, and that there is a real possibility that such evidence may be destroyed before the hearing may take place.

16. Based on the evidence before this Court, and the evidence obtained during the raid carried out by the Anti Counterfeit authority, I am satisfied that the threshold has been met to warrant an inspection and preservation of any evidence held by the respondent for the ensuring a fair hearing of the suit. However, in order to guard against any oppression at this stage, and given that the orders are being issued at an interlocutory stage of proceedings, I am not inclined to order seizure at this point, and therefore limit the orders to inspection and preservation only. Further, the said orders shall be executed under supervision of an Inspection Officer from the Anti Counterfeit Authority duly authorized under the provisions of the *Anti-Counterfeit Act* to carry out such assistance and supervision as may be necessary.

Conclusion and Disposition

17. Based on the reasons set out above, I find that the Application is with merit. The orders of the Court are as follows: -

    1. A temporary injunction be and is hereby issued restraining the Defendant, its servants, employees, representatives, and/or agents from manufacturing, vending, selling, distributing or otherwise the sale from retail, wholesale and any other points of sale or otherwise howsoever from infringing the 2nd Plaintiff/Applicants trademark number 124320 Class: 2 (shoe dye), under Part A, name and use of its trade mark 'Strong Bond Black Leather Dye' and logo on its associated products or offering goods or passing off their products as belonging to the Plaintiffs pending the hearing and determination of this the suit.

    2. The 1st and 2nd Plaintiffs, in the company of their respective legal counsel and an Inspector of the Anti – Counterfeit Authority are hereby permitted to enter the Defendant's premises situated along Industrial Area in Nairobi County for the purposes of inspecting and preserving all products and advertising materials bearing the trademark 'Strong Bond Black Leather Dye' and all purchases and sales record invoices for the past twelve months touching concerning the same brand.

    3. The Plaintiffs are awarded costs of this Application.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 6TH DAY OF NOVEMBER, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for 1st Plaintiff

.....for 2nd Plaintiff

.....for 3rd Plaintiff

.....for Defendant