



REPUBLIC OF KENYA



KENYA LAW
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**Cheburet v Misik & 2 others (Civil Case E203 of 2025)
[2025] KEMC 264 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEMC 264 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE E203 OF 2025
PA NDEGE, SPM
NOVEMBER 4, 2025**

BETWEEN

ISMAEL LANGAT CHEBURET PLAINTIFF

AND

CHARLES CHERUIYOT MISIK 1ST RESPONDENT

SIDIAN BANK LIMITED 2ND RESPONDENT

ONYX AUCTIONEERS 3RD RESPONDENT

RULING

1. The Notice of Motion herein is brought under Order 51 of Civil Procedure Rules and Section 1A, 1B and 3A of the *Civil Procedure Act*, seeking the following substantive orders.
 - a. That pending the hearing and determination of this suit, this Honorable Court be pleased to issue temporary orders restraining the Respondents, their servants, agents and/or any person from whomsoever working on their instructions from repossessing, selling, possessing, using, auctioning, dealing with and in any way interfering with the applicant's motor vehicle registration number KDD 868D, chassis No. AHTFZ29G609110142, engine no. 1KDA421065, make Toyota Hilux Grey 2014 Model.
 - b. That pending hearing and determination of this suit this Honorable Court be pleased to issue orders compelling the 2nd and 3rd respondents to release the applicant's motor vehicle registration number KDD 868D, chassis No. AHTFZ29G609110142, engine no. 1KDA421065, make Toyota Hilux Grey 2014 Model to the applicant.
 - c. That the OCS Nakuru Central Police Station to enforce compliance of the Honorable Court Orders.
 - d. That the costs be provided for.



2. The application is supported by the affidavit of the applicant sworn at Nakuru on 11/03/2025 and the 21 grounds on the face thereof. It has been opposed by the 2nd and 3rd defendants/respondents through a replying affidavit of Geoffrey Magati, the 2nd Defendant/ Respondent's senior officer-early Collection, sworn at Nairobi on 30/04/2025. The 1st Defendant/ Respondent filed affidavits supporting the application.
3. Parties filed and, I believe, exchanged their written submissions. I have gone through the submissions and the authorities cited therein. The principles for the grant of a temporary injunction or a restraining order have been well captured therein.
4. The principles that were set out in *Giella v Cassman Brown & Co. Ltd*[1973] EA 358 are well known; that an applicant for a temporary injunction must show that he has a prima facie case with a probability of success; that such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury or harm which cannot be adequately compensated by an award of damages and if there is a doubt to the foregoing, the application will be determined on a balance of convenience.
5. In *Nguruman Ltd v Jan Bonde Nielson C.A.77/2012*, the court considered what irreparable loss entails, when it said:

“an applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately compensated or remedied by damages in the absence of an injunction. This is the threshold required and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of 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. An injury is irreparable where there is no standard by which the amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation of whatever amount will never be adequate remedy.”

6. I do find that the dispute between the parties herein can be determined in monetary terms up to the last cent. The applicant has not alleged, let alone proved on a balance of probabilities, that the 2nd respondent will be unable to compensate him for any loss that he may suffer if the claim or suit succeeds, absent the injunction. I find this ground alone, sufficient to dispose of this application. I do therefore hereby dismiss the application herein with costs to the 2nd and 3rd respondents.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 04TH DAY OF NOVEMBER 2025.

HON. A. NDEGE SPM.

In the presence of

ESANG. present for the applicant

BOMET. present for the 1st Respondent

OGUYE.....present for the 2nd/ 3rd Respondents

Applicant/ Plaintiff: N/A

1st Respondent/ Defendant: N/A

Bomet: We can close the pleadings.



CT. Parties to close pleadings and comply. Mn. 05/05/26.

Page 2 of 2

