

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**COMMERCIAL SUIT NO. E076 OF 2023**

**CLARE MARGARET JETHWA.....1<sup>ST</sup>**  
**APPLICANT**

**ANNAMARIA WATRIN.....2<sup>ND</sup>**  
**APPLICANT**

**GLORIA ADERO.....3<sup>RD</sup>**  
**APPLICANT**

**CAROLINE MARY MATHER.....4<sup>TH</sup>**  
**APPLICANT**

**AHMED MIR & SAMINA MIR.....5<sup>TH</sup>**  
**APPLICANT**

**ANUPA BIPINCHANDRA SANGHRAJKA.....6<sup>TH</sup>**  
**APPLICANT**

**ASFAW KUMSSA & DURE NEGASSA.....7<sup>TH</sup>**  
**APPLICANT**

**NEBIYU WORKINEH.....8<sup>TH</sup>**  
**APPLICANT**

**SHAILEEN PARMAR.....9<sup>TH</sup>**  
**APPLICANT**

**HOLLAND PARK INVESTMENTS LLP.....10<sup>TH</sup>**  
**APPLICANT**

**SPECIALIZED POWER SYSTEMS LIMITED.....11<sup>TH</sup>**  
**APPLICANT**

**TADDESECH Y. WOLDEGIORGIS &**

**ISAAC ARAYA KEFEWLA.....12<sup>TH</sup>**

**APPLICANT**

**VERSUS**

**JOSEPH SCHWARTZMAN.....1<sup>ST</sup>**

**DEFENDANT/RESPONDENT**

**PARVIN PATEL MAVJI.....2<sup>ND</sup>**

**DEFENDANT/RESPONDENT**

**SAMEER N. MERALI.....3<sup>RD</sup>**

**DEFENDANT/RESPONDENT**

**MUTHAIGA HEIGHTS**

**MANAGEMENT PLC.....4<sup>TH</sup>**

**DEFENDANT/RESPONDENT**

**TONER HOLDINGS LTD.....5<sup>TH</sup>**

**DEFENDANT/RESPONDENT**

**RULING**

1. By a Notice of Motion dated 27<sup>th</sup> March 2025, the Plaintiffs/Applicants moved this Court under Article 159 of the Constitution, Sections 1A, 1B & 3A of the Civil Procedure Act, and Order 51 Rule 1 of the Civil Procedure Rules, seeking a temporary injunction restraining the Respondents, their agents or any persons acting on their instructions, from disconnecting water supply to any of the Applicants’ units at Muthaiga Heights Development, or in any way interfering with their use and occupation of the said units, pending the hearing and determination of the main suit.
2. The Applicants aver that they are shareholders and owners of residential units in Muthaiga Heights Management PLC,

the 4<sup>th</sup> Respondent. They contend that they previously instituted a suit on 25<sup>th</sup> February 2023, challenging the management and control of the 4<sup>th</sup> Respondent by the 1<sup>st</sup> - 3<sup>rd</sup> Respondents, including an application to restrain the holding of an Annual General Meeting scheduled for 27<sup>th</sup> February 2023 on grounds that the Respondents are illegally in office.

3. They aver that despite the pendency of that suit, the 1<sup>st</sup> - 3<sup>rd</sup> Respondents have continued to mismanage the affairs of the 4<sup>th</sup> Respondent. In December 2023, they allegedly resolved to collect monies from unit owners for drilling a borehole, a matter which the Applicants argue would render parts of the main suit nugatory. They state that the lease agreement assigns the responsibility of developing and maintaining the borehole to the 5<sup>th</sup> Respondent, as part of the common areas.
4. The Applicants further state that the Respondents have now threatened to disconnect the Applicants' water supply on account of alleged arrears relating to the borehole project. As they have no alternative water source, they argue that they stand to suffer irreparable harm, as water is a basic necessity for the sustenance of life.
5. The Respondents oppose the application through a Replying Affidavit sworn on 5<sup>th</sup> June 2025 by Pravin Patel Mavji, a director of the 4<sup>th</sup> Respondent. They contend that the 4<sup>th</sup>

Respondent is properly mandated to manage utilities and common services, including water supply.

6. They aver that the application is not anchored on any substantive prayer in the plaint and is therefore incompetent. They further state that the borehole project was necessitated by persistent water shortages from Nairobi City Water & Sewerage Co. Ltd. All unit owners were notified by a letter dated 20<sup>th</sup> December 2023 of the estimated cost and mode of contribution. A majority supported the proposal and paid their contributions, leading to the drilling and successful operation of the borehole in 2025.
7. The Respondents state that the Applicants have failed to settle their arrears despite repeated reminders, yet continue to benefit from improved water supply funded by other owners. They argue that this offends the principles of equity, and that the Applicants have come to Court with unclean hands. They further rely on Section 143 of the Companies Act to assert that directors have powers to enter into contracts for the benefit of the company.
8. The application was canvassed by way of written submissions. the plaintiff/applicant filed submissions dated 12<sup>th</sup> May 2025, while the Respondent's defendants filed submissions dated 4<sup>th</sup> July 2025. I have carefully considered the application, responses, and rival submissions..

### **Analysis and determination**

9. The key issue for determination is whether the Applicants have satisfied the legal threshold for the grant of a temporary injunction. The principles guiding the Court in the grant of such injunctions were set out in the case of **Giella v Cassman Brown & Co. Ltd (1973) EA** as follows:

***“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”***

10. A prima facie case is defined in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as:

***“A case 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 as to call for an explanation or rebuttal from the latter.”***

11. The Applicants claim that the Respondents’ decision to require contribution to the borehole project and the threat to disconnect their water contravenes the lease agreement, which, in their view, places responsibility for water infrastructure on the 5<sup>th</sup> Respondent. They also place

reliance on the earlier suit concerning the legality of the Respondents' management.

12. The Respondents, on the other hand, have demonstrated that the project was necessitated by chronic shortages, approved by a majority of unit owners, and is now the main water source. They further assert the statutory authority of directors under Section 143 of the Companies Act to make decisions for the benefit of the company, including utilities management.
13. The question whether the 4<sup>th</sup> Respondent acted *ultra vires* the lease, whether the 5<sup>th</sup> Respondent bears the responsibility for water infrastructure, and whether the Respondents are legally in office, are substantive issues to be determined at trial.
14. The question is whether the Applicants' rights are arguably threatened. Access to water is undoubtedly fundamental, and unilateral disconnection, especially where water is a basic necessity, may raise questions of law and equity. I am persuaded that the threat of disconnection raises a triable issue sufficient to meet the first limb.
15. An irreparable harm means injury that cannot be adequately remedied by damages. In the instant case, water is essential for human life and habitation. The Applicants state that they have no alternative water source. I find that the disconnection of the water supply to occupied residential premises will constitute irreparable harm:

16. The Respondents argue that the Applicants can simply pay their arrears. However, that contention presupposes the legality of the charges, a matter yet to be determined in the main suit.
17. I am therefore satisfied that the Applicants have demonstrated a likelihood of suffering irreparable harm.
18. On the last limb, the balance of convenience requires the Court to maintain the *status quo*. The *status quo* here is that the Applicants continue to access water.
19. Disconnection would result in hardship and potential health risks. On the other hand, the Respondents' interests can be safeguarded by the Applicants' continued obligation if found liable to settle any legitimate charges.
20. The balance of convenience, therefore, tilts in favour of preserving the water supply.
21. The Respondents argue that the application is not anchored on a substantive prayer in the Plaint. The Supreme Court in **Railway Housing Co-operative Society Ltd v Attorney General [2019] eKLR** emphasized that technicalities should not override substantive justice, in line with Article 159(2)(d).
22. The main suit raises issues concerning the management and control of the 4<sup>th</sup> Respondent and obligations relating to common utilities. The present

application flows directly from those issues. I do not, therefore, find the application incompetent.

23. In the foregoing, I find merit in the application dated 27<sup>th</sup> March 2025. Accordingly, I make the following orders;

- i. A temporary injunction is hereby issued restraining the Respondents, whether by themselves, their agents, employees, or any persons acting at their behest, from disconnecting or in any manner interfering with the water supply to any of the Applicants' residential units at Muthaiga Heights Development, pending the hearing and determination of the main suit.***
  
- ii. Costs of this application shall be in the cause.***

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **20<sup>th</sup>** day of **November** 2025.

**P.M. MULWA**

**JUDGE**

**In the presence of:**

*Mr. Khatete* for Applicants

*Ms. Mbayi* for Respondents

Court Assistant: *Carlos*