



**Vilnuis Hauliers Limited v Mariam Hauliers Company Limited (Commercial Case E039 of 2025) [2025] KEHC 17242 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17242 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
COMMERCIAL CASE E039 OF 2025  
G MUTAI, J  
NOVEMBER 17, 2025**

**BETWEEN**

**VILNUIS HAULIERS LIMITED ..... APPLICANT**

**AND**

**MARIAM HAULIERS COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The plaintiff/applicant filed the notice of motion dated 16<sup>th</sup> July 2025. When the matter came up before Ngaah, J, on 17<sup>th</sup> July 2025, he certified it urgent and issued orders as sought in prayers 2,3, and 4 of the motion.
2. Although the respondents were served by email through m.thabit@mariamhauliers.co.tz, logisticmhl@gmail.com, and s.mohamed@mariamhauliers.co.tz, email addresses that the deponent, the counsel for the plaintiff/applicant, stated in her deposition are held by officials of the defendant/respondent and are familiar to the plaintiff/applicant due to prior dealings, the defendants/respondents failed to appear or file a defense or rejoinder to the application. As a result, the application was unopposed.
3. The affidavits of service, which this Court has perused, are dated 25<sup>th</sup> July 2025 and 12<sup>th</sup> November 2025 and were filed as evidence of the fact that the defendant /respondent was served.
4. The application was canvassed by way of written submissions. The plaintiff/applicant's submissions are dated 3<sup>rd</sup> November 2025.
5. The plaintiff /applicant seeks an order of an injunction so that it can continue doing business without being harassed by the defendant/respondent pending the hearing and determination of the suit filed herein.



6. As the plaintiff/applicant is seeking an order of injunction, the court must be satisfied that the conditions that must exist for an order of injunction to issue, as set out in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358, have been met. In the said case, Spry, V.P., stated as follows at page 360E:-

“The conditions for the grant of an interlocutory injunction are now well settled in East Africa. 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 the case on the balance of convenience.”.

7. The Court of Appeal, while applying the above decision, in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), held that

“In an interlocutory injunction application, the applicant 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, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

8. The plaintiff/applicant had a contract with the respondent under which it was to transport goods of a perishable nature, namely fish, to the Democratic Republic of the Congo and Rwanda. When the contract was subsisting, the plaintiff/applicant, through its agent, Overseas Clearing and Forwarding Ltd, cleared and delivered several containers of cargo to the respondent, for transportation to ETS Ad Global Ltd and Ad Global Ltd, the consignees. The goods were delivered in a damaged state, which the plaintiff/applicant avers was contrary to the transport agreement and the respondent’s duty as a bailee and or common carrier for reward.
9. In my view, considering the foregoing, the plaintiff/applicant has a prima facie case with a likelihood of success. The plaintiff/applicant’s case is not contested. Since the allegations made by the plaintiff/applicant have not been contested, this court finds and holds that there is a right of the said party that appears to have been infringed and which requires an explanation or rebuttal, which has not been provided.



10. Put differently, this Court is of the view that the plaintiff/applicant has a prima facie with probability of success. In stating that, I am guided by the decision of the Court of Appeal in the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR 125, where it was stated that: -

“In civil cases, a prima facie case 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. 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.”

11. The plaintiff/applicant is apprehensive that it may be unable to conduct its business unless an injunction is granted. Closure of its business, or any action that renders the plaintiff/applicant unable to operate lawfully, is an irreparable injury that is incapable of being compensated by an award of damages.

12. Where does the balance of convenience lie? The applicant seeks a conservatory order. In my view, the balance of convenience falls in favour of the grant of orders sought.

13. The upshot of the foregoing is that the notice of motion dated 16<sup>th</sup> July 2025 has merit. The same is allowed as prayed.

14. Regarding costs, I grant the plaintiff/applicant the costs of the application.

15. It is so ordered.

**DATED AND SIGNED THIS 17<sup>TH</sup> DAY OF NOVEMBER 2025 . DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:

Ms Kemunto, for the Plaintiff/Applicant;

No appearance for the Respondent; and

Arthur - Court Assistant.

