



**Tsavo City Limited v Anno Investments Limited (Miscellaneous Application E752 of 2024)  
[2025] KEHC 17861 (KLR) (Commercial and Tax) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17861 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E752 OF 2024**

**FG MUGAMBI, J  
NOVEMBER 28, 2025**

**BETWEEN**

**TSAVO CITY LIMITED ..... PLAINTIFF**

**AND**

**ANNO INVESTMENTS LIMITED ..... DEFENDANT**

**RULING**

1. The plaintiff (Tsavo City), asserts that it is the registered proprietor of the "Tsavo" trademark under classes 35, 36 and 37. It avers that over the past eight years, it has cultivated a strong brand identity around the "Tsavo" mark and its derivative "Tsavorite," which it uses extensively in investor communications, websites, and social media. While in the process of registering "Tsavorite" under the same trademark classes, Tsavo City discovered that the defendant (Anno Investments) had already registered the mark "Tsavorite Gardens" (Trademark No. 131183) under classes 35 and 36 with the Kenya Industrial Property Institute (KIPI).
2. Tsavo City further became aware that Anno Investments was marketing a real estate development in Kilimani, Nairobi, under the name "Tsavorite Garden Apartments". Tsavo City contends that this use amounts to an unauthorized appropriation of its brand, which has the potential of misleading the public into believing that Anno Investments's project is affiliated with or endorsed by Tsavo City. Despite sending a cease-and-desist letter, Anno Investments had failed to respond and instead proceeded to register the disputed mark.
3. Tsavo City further states that it initiated an application to register "Tsavorite," and received confirmation from KIPI in December 2023 that the mark was available. However, in March 2024, KIPI issued a provisional refusal, citing Anno Investments's prior registration. Tsavo City argues that Anno Investments's continued use of the offending mark is likely to cause confusion among consumers, damage its brand, and undermine the legal protections afforded by its trademarks.



4. To address the alleged infringement, Tsavo City confirms that it has filed an application with KIPi seeking the expungement of Anno Investments’s trademark. In addition, Tsavo City seeks relief from this Court, including a permanent injunction to stop Anno Investments from using “Tsavorite,” a public apology, destruction of all infringing materials, general damages or an account of profits, and interest on any awarded sums. The 2 applications that are the subject of this Ruling arise from this set of facts.

The application dated 20<sup>th</sup> February 2025:

5. The application is brought by Anno Investments under Section 53 of the *Trade Marks Act* amongst others. It seeks to stay the proceedings before KIPi filed by Tsavo City, pending the hearing and determination of the present proceedings. The application is opposed by way of Grounds of Opposition dated 28<sup>th</sup> May 2025. Parties filed their respective written submissions which I have also considered.
6. The jurisprudence on stay of proceedings is well settled. As emphasized in *Global Tours & Travels Limited, Nbi HC Winding Up Cause No. 43 of 2000* and *Kenya Wildlife Service v James Mutembei, [2019] KEHC 10478 (KLR)*, stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It encroaches on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent and should only be granted in exceptional circumstances.
7. Anno Investments is apprehensive that the concurrent proceedings before this Court and the Registrar may cause embarrassment and lead to conflicting decisions. Tsavo City on the other hand insists that no prejudice will be occasioned by having the two proceedings concurrently.
8. Section 35(1) of the Trade Mark’s Act provides that:

“ Any person aggrieved by the non-insertion in or omission from the register of an entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the court or, at the option of the applicant and subject to the provisions of section 53, to the Registrar, and the court or the Registrar may make such order for making, expunging or varying the entry as the court or the Registrar may think fit.”
9. Section 53 on the other hand provides that:

“ Where under any of the foregoing provisions of this Act an applicant has an option to make an application either to the court or to the Registrar—(a)if an action concerning in the trade mark in question is pending, the application shall be made to the court;(b)if in any other case the application is made to the Registrar, he may, at any stage of the proceedings, refer the application to the court, or he may after hearing the parties determine the question between them, subject to appeal to the court.”
10. The combined effect of Sections 35(1) and 53 of the *Trade Marks Act* is to provide a dual pathway for addressing grievances related to entries in the trademark register, but at the same time ensure that there is judicial oversight where necessary. Section 35(1) grants an aggrieved party the right to seek rectification of a trademark entry either before the Registrar or the court. However, Section 53 qualifies this choice by mandating that if there is an ongoing legal dispute involving the trademark, the matter must be brought before the court. In all other cases, the Registrar may hear the application but retains the discretion to refer it to the court or render a decision subject to appeal.



11. I have been referred to the decisions in *Scotch Whisky Association & 2 others v Africa Spirits Limited*, [2021] KEHC 224 (KLR) and *Microtech Enterprises Ltd v Sollatek Electronic (Kenya) Ltd*, [2019] eKLR. I do concur with the finding of the Court (Okwany, J) in *Scotch Whisky Association* (supra) as follows:

“While I appreciate the fact that the parties herein have submitted to the jurisdiction of both the court and the Registrar of Trademarks, I find that the court has a wider scope in terms of granting the reliefs that available to the parties. The Registrar’s mandate is with respect to settling disputes over registration of trademarks which mandate does not extend to the granting of injunctive reliefs which are only available to the parties if the matter is before the court.”

12. Applying these principles, it is evident that while Tsavo City initiated expungement proceedings before the Registrar, they subsequently approached this Court seeking injunctive relief. Given that the Registrar lacks jurisdiction to grant such relief, Tsavo City’s invocation of both forums is not improper per se.
13. I acknowledge the imperative of upholding the procedural hierarchy and affording due deference to the specialized competence of statutory tribunals. In line with the jurisprudence in *Okoiti v Judicial Service Commission & 2 Others* and *Geoffrey Muthiga Kabiru & 2 Others v Samuel Munga Henry & 1756 Others*, [2015] eKLR, I find that the most prudent course is to confine this Court’s jurisdiction at this point to the injunctive relief sought, while allowing the Registrar to proceed with the expungement application. This approach will ensure judicial economy of time and resources. It equally respects institutional boundaries, and minimizes the risk of conflicting outcomes.
14. Moreover, should Tsavo City succeed before the Registrar, the issues before this Court may be rendered partly moot. Conversely, any party aggrieved by the Registrar’s decision retains the statutory right of appeal to this Court. Accordingly, I decline to stay the proceedings before the Registrar. The Court shall proceed to determine only the injunctive relief sought.

The application dated 9<sup>th</sup> December 2024:

15. Tsavo City seeks injunctive relief against Anno Investment from the continued use or passing off of the word and phrase “Tsavorite” in all its advertisements and all real estate ventures, pending the hearing and determination of the main suit. The application is opposed by Anno Investment through a replying affidavit sworn on 20<sup>th</sup> February 2025. Parties filed their respective submissions which I have equally considered.
16. Tsavo City relies on its Certificate of Registration for the mark Tsavo which was registered on 11<sup>th</sup> March 2019. The respondent has however produced a Certificate of Registration for Tsavorite, dated 27<sup>th</sup> November 2023. The central issue is thus one of proprietorship and priority. While registration is prima facie evidence of ownership, it is not conclusive. The Court must also consider prior use, as articulated in *Lacoste v Crocodile International PTE Limited* CIV, 2009-485 2536, where this Court held that: where proprietorship of a registered trade mark is challenged, the registered owner of the trade mark must show that the trade mark had not been used previously by another person and that the registered proprietor had used the trade mark in the relevant jurisdiction.
17. Besides prior use, to succeed under Section 15A (1) of the *Trade Marks Act*, Tsavo City must also establish that as a result of Tsavo City’s efforts, use and investment, the mark Tsavorite has attained the status of a well-known mark in Kenya. In *Sony Corporation v Sony Holding Limited*, [2018] eKLR, the Court held that the burden lies with the applicant to provide concrete evidence, such as market



surveys, sales data, and advertising reach, to support the claim of well-knownness. The Court stated as follows:

“A person asserting well-knownness of a trade mark bears the responsibility of submitting information (evidence) in respect to factors from which the competent authority may infer that the trade mark is indeed well known. This is not left to the perception or personal inclination of the competent authority.”

18. Similarly, in *LA Group (Pty) Ltd v Lifestyle Equities C.v*, [2023] KEHC 17351 (KLR), this Court emphasized that mere assertions or anecdotal evidence are insufficient.
19. In order to establish that the mark *Tsavorite* was well known in Kenya at the material time, *Tsavo City* bore the burden of producing cogent and credible evidence to demonstrate that the mark had acquired substantial recognition among the relevant segment of the Kenyan public prior to the date of *Anno Investments*'s trademark application. This requirement is grounded in the principle that the status of a mark as "well known" must be assessed as at the time of the alleged infringement or contested registration, not retrospectively.
20. Accordingly, any evidence of use, promotion, or market presence that postdates *Anno Investments*'s registration is of limited probative value and cannot be relied upon to establish prior reputation or goodwill. The rationale is that subsequent use cannot retroactively confer distinctiveness or consumer recognition that did not exist at the relevant time.
21. In the present case, while *Tsavo City* maintains its longstanding use of the derivative mark "*Tsavorite*," the evidence submitted in support of this claim predominantly reflects activities undertaken after *Anno Investments*'s registration of the mark in November 2023. There is a conspicuous absence of contemporaneous documentation, such as dated advertisements, sales records, consumer surveys, or media coverage, demonstrating that the mark had, by that time, achieved the level of public recognition necessary to qualify as a well-known mark under Kenyan trademark law.
22. In the absence of such pre-registration evidence, *Tsavo City*'s claim that "*Tsavorite*" had acquired a distinctive reputation prior to *Anno Investments*'s registration remains unsubstantiated. This undermines the assertion that the public would have associated the mark exclusively with *Tsavo City* at the material time, thereby weakening its claim for protection under the doctrine of well-known marks.
23. With respect to the evidence of use of the mark that predates *Anno Investments*'s registration, *Tsavo City* has not furnished sufficient quantitative data. To meet the threshold for recognition under the doctrine of well-known marks, *Tsavo City* was expected to present objective, measurable indicators of market penetration and consumer association such as sales volumes, advertising expenses, customer surveys and market reach amongst others.

### **Disposition**

24. Overall, I find that the applicants have failed to establish a prima facie case with a probability of success. Their claim for an injunction therefore fails at this first hurdle, consistent with the dicta in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (supra).
25. Accordingly, the application dated 9<sup>th</sup> December 2024 is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI**

**THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUGAMBI**



**JUDGE**

