



**Wanca Investments Limited v China Railway No 10 Engineering Group
Company Limited & 2 others (Miscellaneous Application E1103 of 2024)
[2025] KEHC 17888 (KLR) (Commercial and Tax) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E1103 OF 2024
JWW MONG'ARE, J
DECEMBER 1, 2025**

BETWEEN

WANCA INVESTMENTS LIMITED APPLICANT

AND

**CHINA RAILWAY NO 10 ENGINEERING GROUP COMPANY
LIMITED 1ST RESPONDENT**

KENYA COMMERCIAL BANK LIMITED 2ND RESPONDENT

STANBIC BANK KENYA LIMITED 3RD RESPONDENT

RULING

Introduction and Background

1. The Applicant, through its Notice of Motion dated 26th November 2024, seeks the court to issue a Mareva injunction to freeze the 1st Respondent's ("the Respondent") bank accounts domiciled at the 2nd and 3rd Respondents ("the Banks") and that the freeze should be to the value of the invoice sum of Kshs. 14,132,291.44/= pending determination before an arbitral tribunal. The Applicant also seeks an order for the Banks to provide up-to-date statements of the accounts and for them to appear in court and show cause why they should not pay the accumulated rent from the frozen accounts to the Applicant.
2. The application is supported by the affidavits of the Applicant's director, HUI HUI WU, sworn on 26th November 2024 and 24th February 2025 and opposed by the Respondent through the replying affidavit of its director, Victoria Mukiri, sworn on 7th February 2025. The application has been canvassed by



way of written submissions that I have considered and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

3. From the parties' submissions, the court is being called to determine the following issues:
 1. Whether the Applicant has exhausted the dispute resolution mechanisms available to it
 2. Whether the application should have been filed at this court
 3. Whether this matter should have been placed before a subordinate court for hearing and determination
 4. Whether the Applicant has met the threshold for granting a Mareva injunction and should therefore be granted the orders sought
 5. Who bears the costs of this application

Exhaustion of dispute resolution mechanisms

4. The Respondent submits that the Applicant has not exhausted the covenanted dispute resolution mechanisms, which include joint reconciliation of accounts, negotiations, and finally, arbitration. It states that the subject costs were subject to negotiation as per Clause 5.1 of the Agreement and the matter had not yet crystallized for determination by entities beyond the parties. That the Applicant's unilateral conduct of sending ETR invoices which cannot be adjusted was meant to defeat payment of just accounts and reconciliation and that the contract also allowed for flexible payment periods under Clause 6.4 if the Respondent encountered financial challenges, which the Applicant had not been apprised of due to lack of demand. As such, the Respondent advances that the court's jurisdiction to entertain the dispute has not yet crystallized as there is no evidence that negotiations were founded, proceeded with, and failed.
5. In response, the Applicant deponed that the Respondent failed to adduce any evidence showing they inquired why the Applicant's representative was not dispatched for reconciliation and that even after the Applicant sent a demand letter dated 23rd September 2024, the Respondent never reached out to discuss joint reconciliation. The Applicant states that it had raised various invoices and a demand letter that were sent to the Respondent and it asserts there is no dispute of debt and the Respondent only contests the amount owed. That this failure to agree on the amount led the Applicant to commence arbitral proceedings. The Applicant contends that the Respondent never invoked Clause 6.4 on the flexible payment period due to financial challenges and has filed no proof of such challenges. Furthermore, that the debt has been unsettled for over 2 years, far exceeding the 3-month grace period in the agreement and that the Respondent's ongoing new projects indicate they are knowingly and willingly denying the Applicant its money, not facing financial difficulty.
6. In sum, the Applicant avers that Clause 10 requires disputes to be settled first through negotiation, and if no agreement is reached, then submitted to arbitration. It states the parties have failed to reach an agreement on the amount, justifying the move to arbitration.
7. Going through the pleadings, I find that the Applicant sent numerous ETR invoices over one year between April 2022 and April 2023 and the Respondent did not pay for them. The Applicant's advocates sent a formal demand letter on 23rd September 2024, specifying the amount owed and threatening legal proceedings. It is clear that the Respondent did not respond to this demand letter by either initiating reconciliation or negotiation. The Respondent's own submission reveals the core of



the dispute which is that it contests the amount in the Applicant's "unilateral" invoices. A disagreement over the quantum of a debt is itself a dispute. The contract's mechanism for joint reconciliation was precisely the tool to resolve this disagreement. By not engaging when invoices were sent and, most importantly, when a formal demand was made, the Respondent effectively allowed the disagreement to solidify into an intractable dispute to be resolved by way of arbitration. The Applicant correctly states that the parties have failed to reach an agreement on the amount due and this failure is the very event that triggers the next stage of the dispute resolution process.

8. It is also my finding that the Respondent's arguments are not backed by the factual record. On Clause 6.4 on financial hardship, the Respondent admits it never informed the Applicant of any financial challenges. Furthermore, the Applicant's point that the debt is over two years old, far exceeding the 3-month grace period and that the Respondent is engaged in new projects severely undermines this defense. It suggests bad faith, not genuine financial difficulty. As stated, the Respondent criticizes the Applicant for not initiating reconciliation but provides no evidence that they themselves ever took the initiative to dispute the invoices or call for a joint meeting before being sued. In commercial practice, a party cannot passively allow a debt to accumulate and then claim the other party did not try hard enough to negotiate.
9. Therefore, the condition precedent for arbitration, that is, negotiation, failed to resolve the dispute meaning the dispute has crystallized for arbitration.

Jurisdictional competence of this court

10. The Respondent has also submitted that the Application should have been filed at the Chief Magistrate's Court, as the claim of Kshs. 14,132,291.44 is within its pecuniary jurisdiction which deals with matters of up to Kshs. 20,000,000.00. That section 11 of the [Civil Procedure Act](#) stipulates that every suit should be instituted in the lowest grade competent to try it and that the Applicant's prayer that the file be placed before the "duty magistrate" for immediate orders is an offensive attempt to trample on law, procedure, and logic regarding the jurisdictional competence of the High Court. In response, the Applicant deponed that the reference to a "magistrate" is a mere procedural technicality which the court should not dwell on.
 1. The application is anchored under inter alia section 7 of the [Arbitration Act](#) which provides as follows:
 7. Interim measures by court
 - (1) It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.
 - (2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.
12. It is therefore clear that an application anchored under section 7 of the [Arbitration Act](#) is made to this court and not the magistrates' court. Further, it should not be lost that matters relating to arbitration are governed by the [Arbitration Act](#), which is a complete code on the subject, and not by the [Civil Procedure Act](#) or the Rules therein. This position has been affirmed in several decisions including *Nyutu Agrovet Limited v Airtel Networks Limited* [2015] KECA 1012 (KLR), *Kamconsult Limited v Telkom Kenya Limited & another* [2016] KECA 313 (KLR) and *Anne Mumbi Hinga v Victoria*



Njoki Gathara [2008] KECA 30 (KLR). It is therefore my finding that this court has the requisite jurisdiction to entertain the present application and issue the orders sought by the Applicant.

The Mareva injunction

13. In *Zakhem International Construction Limited & another v Oilfields Engineering and Supplies Limited & another; Kenya Pipeline Company Ltd (Intended Interested Party)* [2023] KEHC 21842 (KLR), the court (Mugambi J.,) explained and set out the effect of a Mareva injunction as follows:
 18. The Halsbury Laws of England 3rd Edition Vol. 3 [1] page 329 to 331 defines a Mareva injunction as:

“An order of the court restraining a party to proceedings from removing from the jurisdiction of the court, or otherwise dealing with assets, located within that jurisdiction and in more limited circumstances from dealing with assets located outside, the jurisdiction.”
 19. On the purpose and application of Mareva injunctions, Lord Denning in the locus classicus case of *Mareva Campania Naviera SA V International Bulkcarriers SA* [1980] 1 All E.R. 213 stated as follows at page 215:

“... that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets.” (emphasis mine).
 20. In *Fourie v Le Roux & Ors* [2007] UKHL 1 at Para 2, [2007] 1 All ER 1087, Lord Bingham also observed that:

“Mareva (or freezing) injunctions ...are granted to protect the efficacy of court proceedings, domestic or foreign.”
 21. The position is further captured in the Halsbury’s Laws of England (supra) to the extent that:

“The foundation of the court’s jurisdiction is the need to prevent judgments of the court from being rendered ineffective, whether by the removal of the defendant’s assets from the jurisdiction, or by dissipation.”
 22. The preventive and anticipatory character of injunctive orders is also captured under Order 40 of the Civil Procedure Rules 2010. Rule (1)(b) particularly provides that if:

“The defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.”
14. It can therefore be stated that for a mareva injunction to be granted, the subject assets must be located within the court’s jurisdiction, it is applicable to a creditor who has a right to be paid a debt owing



- to them, there is a danger that the debtor may dispose of the assets so as to defeat it before judgment and the same is issued to prevent the debtor from disposing of those assets and to protect the efficacy of court proceedings.
15. The Applicant claims it has confidential information that the directors of the Respondent are planning to close operations in Kenya and leave the country without settling the debt. The Applicant is apprehensive that the Respondent will move funds out of its known bank accounts held at the Banks making it impossible to recover the debt. It contends that if the funds are moved, a mere monetary award from a future arbitration would be useless, as there would be no assets to seize, constituting irreparable harm.
 16. In response, the Respondent depones that there is no risk of asset dissipation and it claims it has a robust and long-term presence in Kenya, listing 13 major ongoing infrastructure projects with contract periods extending for years. It argues this proves they are not a "fly-by-night" company planning to abscond. The Respondent states the Applicant's claim of an imminent exit from Kenya is based on an undisclosed "confidential" source and is not supported by any evidence. The Respondent states that granting the Mareva order would cripple the Respondent's operations, prevent them from paying employees on numerous government projects, and harm the public interest and that the disputed amount is dwarfed by the value of their ongoing projects.
 17. The Respondent states that the request to freeze accounts at any of the Respondent's banks is a fishing expedition and that the specific bank accounts listed are claimed to be for other projects and unrelated to this contract.
 18. Having gone through the application and the depositions of the parties, it is my finding that whereas the Applicant relies on what it terms information from a "confidential source" to prove that the Respondent will exit Kenya and dissipate its assets, there is no corroborating evidence that would allow this Court to draw an inference of an imminent exit. In stark contrast, the Respondent has presented overwhelming and uncontroverted evidence demonstrating its deep-rooted and long-term presence in Kenya. Its affidavit lists notifications of award and contract agreements for 13 major infrastructure projects across the country, including road construction and upgrading projects with durations of 3 to 5 years, a major water supply project set to last three and a half years and a 15-year Build, Lease, Transfer project to develop residential units for the Kenya Defence Forces.
 19. These projects, many of which are publicly funded, represent a substantial and ongoing commercial commitment to the country. It appears that the Respondent's business operations are vast, robust, and plainly not those of a company preparing to abscond. Furthermore, the Respondent has affirmed its status as a duly incorporated company in Kenya with a local director, underscoring its compliance with Kenyan law and its permanence within the jurisdiction.
 20. It is also my finding that the potential harm of granting the injunction vastly outweighs the potential harm of denying it. Freezing the Respondent's accounts would not merely secure a disputed debt; it would cripple its ability to operate. The Respondent has provided a list of specific bank accounts linked to its various projects and has credibly asserted that a freeze would prevent it from paying salaries to its employees and fulfilling its obligations on critical public infrastructure projects. This would cause irreparable harm to the Respondent, its employees, and the public interest, all for a debt whose very quantum is disputed and which represents a fraction of the Respondent's ongoing business.
 21. The Applicant, on the other hand, will not suffer irreparable harm if the injunction is denied. Its remedy in the event it succeeds in arbitration remains a monetary award. The Respondent's demonstrated substantial presence and assets within Kenya provide ample security for any future



decree. Therefore, in the absence of evidence of a real risk of dissipation, the prerequisite for a Mareva injunction is not met. The Court therefore finds the application unmerited.

Conclusion and Disposition

22. In sum I find and hold that the Applicant’s application dated 26th November 2024 is without merit. The same is hereby dismissed in its entirety. Each party shall bear their costs of this application. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF DECEMBER 2025

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J.W.W. MONGARE

JUDGE

In the presence of

1. Ms. Musabaki holding brief for Ms. Wachuka for the Applicant.
2. Mr. Sundwa holding brief for Mr. Okubo for the Respondents.
3. Ivan - Court Assistant

