



**Ashire v Absa Bank Kenya PLC & 3 others (Civil Suit E105 of 2024)
[2025] KEHC 18360 (KLR) (Commercial and Tax) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18360 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E105 OF 2024
PM MULWA, J
DECEMBER 11, 2025**

BETWEEN

SAMUYAN ASHIRE PLAINTIFF

AND

ABSA BANK KENYA PLC 1ST DEFENDANT

TWALA MANKI 2ND DEFENDANT

SIMON MAISON TONGOYO 3RD DEFENDANT

NAGIYO MEIKWAYA 4TH DEFENDANT

RULING

1. This ruling concerns the Notice of Motion dated 15th February 2024 by the Plaintiff/Applicant brought pursuant to Article 159(2) of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 Rule 1 of the Civil Procedure Rules. The Applicant seeks for a freezing injunction order barring the Respondents by themselves, their servants, agents and employees from operating, alienating, dissipating, pledging or in any other way interfering with ABSA A/C No. 20xxxx322 held at the 1st Respondent Bank.
2. It is contended that the Applicant is a former member of Majimbo Group Ranch, registered in 1975 but subsequently dissolved in accordance with the law. That despite the dissolution, the Group Ranch has funds held in the above stated account held at the 1st Respondent's Bank. And that these funds collectively and severally belong to the Group's former members as the Group is non-existent and no one has the authority to operate, run, draw or in any other way manage the said account.
3. The application is supported by the affidavit of the Applicant sworn on 15th February 2024 and basically reiterates the grounds thereof.



4. In opposing the application, Twala Manki (2nd Respondent) swore an affidavit on 8th April 2024 wherein he deposed that the Majimoto Group Ranch operates courtesy of the Transitional Clause in the [Community Land Act](#) 2016, and has been led by several representatives with the current office having been elected on 13th December 2016. That a petition lodged in the ELC, Narok was decided in favour of the current office holders owing to illegal and unprocedural allocation of parcels of land by the former officials.
5. It was further contended for the Respondents that the disputed bank account was opened with the authority of the Registrar of the Group Ranches and this was known to all the members of the Group Ranch including the Applicant, who failed to fully disclose the obtaining situation in a scheme to frustrate the implementation of the decision in the ELC petition.
6. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether the plaintiffs have made a case for the orders sought.
7. The Plaintiff has sought to freeze the bank account held by the 2nd to 4th Defendants at the 1st Defendants bank. The Plaintiff's case was predicated on the fact that the Majimoto Group Ranch having been dissolved and yet has funds held in the subject account, the said funds can only belong to the former members and therefore the Defendants should not access the same. That no person is authorized to operate the account as the Group Ranch is non-existent.
8. The 2nd, 3rd and 4th Defendants argued that upon the judgment in Narok petition no. 268 of 2017 being delivered in their favour, the 2nd Defendant sought the consent of the Registrar of Group Ranches to open an account which was granted on 3rd August 2022 (Annexure TM-2). Hence, the Group Ranch was indeed in existence and therefore the need for an account to run its operations.
9. Order 40 Rule (1) and (2) of the Civil Procedure Rules, provide that:
 - “(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply for the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
 - (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.”
10. In *UBA Kenya Bank Limited v Sylvia Mututi Magotsi* [2015] eKLR, the court outlined the threshold for the grant of a freezing order which is different from the principles set down in *Giella v Cassman Brown & Co. Limited* [1971] EA 358 and held as follows:

“However, a Mareva injunction is a freezing order and is an order in persona restraining or enjoining a person from dissipating an asset directly or indirectly, Goode on Commercial Law 4th Edition at page 1287 states thus; i. The grant of a freezing injunction is governed by principles quite distinct from those laid down for ordinary interim injunctions. Before granting a freezing injunction, the Court will usually require to be satisfied that; a). The Claimant has ‘a good arguable case’ based on a pre-existing cause of action. b). The Claim is one over which the Court has jurisdiction. c). The Defendant appears to have assets within



the jurisdiction. d). There is real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted. e). The balance of convenience is in favor of granting the injunction. f). The Court can also order disclosure of documents or the administration of requests for further information to assist the Claimant in ascertaining the location of the Defendant's assets.”

11. Further, in *Central Bank of Kenya vs Giro Commercial Bank Limited & Another* [2007] 2 EA 93, the court stated:

“However, the power of a court to grant a *mareva* injunction is a discretionary one and is only used in limited circumstances.”

12. From the foregoing, it is clear that freezing orders should be issued with abundant caution owing to their likely impact on business. There is no need for the case to be made out in some special way, but there must be actual evidence from which the appropriate inference may be drawn by the court. Care must be taken to ensure that a party's assets are not frozen and its business live impeded lightly. A *mareva* relief is not to be used to give a party security for the satisfaction of its judgment.

13. As to whether the Plaintiff herein has made out an arguable case, I have considered the documents attached to the rival affidavits. It is noted that the 2nd – 4th Defendants have placed before the Court proof of elections of the Group Ranch held on 13th December 2016 (TM-1), a copy of judgment affirming the election of officials (TM-2) and consent of Registrar of Group Ranches for bank account opening (TM-3).

14. With respect, unlike what the Plaintiff contended, the above is *prima facie* evidence that the Group Ranch exists. That the Ranch has elected officials who are running its operations. And that a bank account was validly opened with the 1st Defendant to aid in running the affairs of the Group Ranch. There is no indication that the monies in the subject account may be used for purposes other than those of the existing Group Ranch. I find the Plaintiff's application is anchored on material non-disclosure.

15. Accordingly, my view is that the Plaintiff has not demonstrated there is a risk that if the freezing orders are not granted the funds in the said accounts would be dissipated. I find no merit in the application dated 15th February 2024 and the same is dismissed with costs to the 2nd, 3rd and 4th Defendants.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 11TH DAY OF DECEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Konde h/b for Ms. Adunga for Plaintiff/Applicant

Ms. Moturi for 2nd, 3rd & 4th Defendants

Court Assistant: Carlos

