



REPUBLIC OF KENYA



KENYA LAW
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**Directline Assurance Company Limited v Macharia & 11 others (Civil Case E328 of 2024)
[2025] KEHC 18575 (KLR) (Commercial and Tax) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E328 OF 2024
F GIKONYO, J
DECEMBER 2, 2025**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED PLAINTIFF

AND

**DR SAMUEL KAMAU MACHARIA 1ST DEFENDANT
BASHIR MBURU 2ND DEFENDANT
JULIUS ORENGE 3RD DEFENDANT
KELVIN MOGENI 4TH DEFENDANT
SALOME GITOHO 5TH DEFENDANT
TOY AND SUNA HOLDINGS LIMITED 6TH DEFENDANT
DIAMOND TRUST BANK LIMITED 7TH DEFENDANT
EQUITY BANK KENYA LIMITED 8TH DEFENDANT
FAMILY BANK LIMITED 9TH DEFENDANT
I & M BANK LIMITED 10TH DEFENDANT
INSURANCE REGULATORY AUTHORITY 11TH DEFENDANT
ATANAS MAINA 12TH DEFENDANT**

RULING

1. The plaintiff filed the notice of motion dated 9.5.2025 seeking: -



1. A declaration that the 1st defendant has acted in contempt of the court's orders of 4.10.2024 by intentionally withholding the plaintiff's title deeds and that he be punished for contempt. (Prayers 2 and 3).
 2. The 1st defendant be ordered to release the plaintiff's title deeds and those belonging to AKM Investments Ltd (one of the plaintiff's major shareholders). (Prayers 4 and 5)
 3. If the 1st defendant does not comply with the orders to release the title deeds in 7 days, the 1st defendant's advocates Kamau Kuria and Company Advocates be ordered to release them. (Prayers 6 and 7)
 4. An order to restrain the 1st defendant or his agents from interfering with the business, management, operations or affairs of the plaintiff without the plaintiff's express approval and consent or further orders of the court. (Prayer 8)
2. The application is supported by the affidavit sworn by the plaintiff's principal officer, Sammy Kanyi on 9.5.2025 and written submissions dated 30.7.2025.
 3. The application is opposed by the 1st defendant through grounds of opposition dated 13.6.2025, a replying affidavit sworn by him on the same date.

Applicant's case

4. The applicant's case is that as per the court's orders of 4.10.2024, the 1st to 6th defendants were restrained from "issuing any directives, instructions or any orders whatsoever to any bodies, persons or corporations holding any monies, bonds, properties or other investments on the Plaintiff's behalf".
5. The applicant contended that the 1st defendant has contravened the orders by instructing his advocates to withhold the plaintiff's title deeds. It highlighted that it has issued penal notices to the 1st defendant, but he has continued to defy the orders.
6. The applicant asserted that neither the 1st defendant nor his advocates have any personal claim on any of the properties or the title deeds despite their continued withholding thereof in attempts to unjustly frustrate the company's operations.
7. The applicant stated that the 1st defendant having carried out a false advertising campaign against the plaintiff's business, the company's business and finances were severely prejudiced. It further stated that due to this, the company set out to dispose of some of its properties for capital needs. It stated that the company has been unable to proceed because the 1st defendant's advocates have continued to unreasonably withhold the titles.
8. The applicant submitted that the subject orders have never been successfully appealed, stayed, set aside or otherwise invalidated and they remain fully in force. It also submitted that a party's opinion that a judge was "wrong in his reasoning" is not justification for a party to disregard and disobey lawful orders.
9. The applicant asserted that Order 40 Rule 3 of the Civil Procedure Rules empowers the court to punish contemnors who disobey interim orders. It also asserted that the court has power to issue mandatory injunction.
10. The applicant relied on: -
 1. Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KEHC 1767 (KLR)



2. Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ) (18 February 2015) (Ruling)
3. Kenya Breweries Limited & another v Washington O. Okeyo [2002] KECA 284 (KLR)

Response

11. The 1st defendant main contention is that the application is wholly unmerited. He also contended that Mr. Kanyi has sworn a false affidavit and has no idea who owns the plaintiff.
12. The 1st defendant challenged the claims of ownership of the titles. He argued that the applicant should not be allowed to proceed with the sale of properties as AKM Investments Ltd and Janus Ltd have previously set out to steal their investments.
13. The 1st defendant deposed that the company was incorporated on 12.7.1998 by him, his wife and their company, Royal Credit Limited. That in 2005, AKM Investments Limited and Janus Limited set out to take the company from them illegally.
14. The 1st defendant further deposed that after the licensing of the plaintiff as an insurer on 28.10.2025, changes in the company's shareholding structure were effected without the prior written approval of the Commissioner of Insurance as required under section 166 (1A) of the *Insurance Act*.
15. The 1st defendant highlighted that the changes effected were declared to be null and void ab initio by the Insurance Regulatory Authority (11th defendant) through its letter dated 5th March 2024.
16. The 1st defendant argued that the plaintiff has not met the threshold required for him to be cited for contempt as the orders of 10.2024 and 20.11.2024 which do not precisely state the rights and obligations of the parties. He also argued that contempt must be proved to a standard which is higher than a balance of probabilities but lower than beyond reasonable doubt.
17. The 1st defendant submitted that interlocutory orders are provisional and the court cannot be taken to have pronounced itself on the merits of the suit. He highlighted that he has appealed and sought stay of the subject orders.

Analysis and Determination

18. The issues before the court are: -
 - a. Whether the 1st defendant has acted in contempt of the court's orders of 4.10.2024 by intentionally withholding the plaintiff's title deeds
 - b. Whether the applicant has met the conditions for the grant of the mandatory and restraining orders.

Whether the 1st defendant has acted in contempt of the court's orders of 4.10.2024 by intentionally withholding the plaintiff's title deeds

19. I have read the orders of 4.10.2024 and 20.11.2024.
20. Order No. 7 of the court's orders of 4.10.2024, restrained the 1st to 6th defendants from, among other things; "issuing any directives, instructions or any orders whatsoever to any bodies, persons or corporations holding any monies, bonds, properties or other investments on the Plaintiff's behalf".
21. This order applies to the actions by the 1st defendant in relation to instruction to Dr. Kamau Kuria on these properties.



22. Nevertheless, there was no specific order compelling the 1st defendant or his advocate to release the title deeds.
23. The other relevant injunctive reliefs were in relation to various bank accounts held by the plaintiff. They were issued to restrain the 1st to 7th and 12th defendants from making any withdrawals, transfers or any other transactions that would result in funds being encumbered or funds being removed from the bank accounts.
24. Order 5 was issued to restrain the 1st to 6th defendants from purporting to act “for or on behalf of the Plaintiff/Applicant in any capacity whatsoever.”
25. The plaintiff claimed that the 1st defendant is in contempt of order 5 for intentionally withholding the title deeds. It exhibited: -
 1. A letter dated 2.11.2020 forwarding the company’s safety deposit box with original title documents to Kamau Kuria & Company Advocates.
 2. An extract from minutes of the special board of directors’ meeting held on 10.4.2025 resolving to approve the disposal of some of the company’s parcels of land.
 3. A letter dated 1.2.2025 from Kamau Kuria & Company Advocates declining to release the company’s title documents because of the contested shareholding of the company under disputes that are currently pending in court. The advocate mentioned that his instructions are to institute interpleader proceedings against the relevant party under order 34 of the Civil Procedure Rules.
 4. A letter dated 8.4.2025 to Kamau Kuria & Company Advocates from Andrew Mmbogori Advocate requesting him to release the safe and the key.
26. As I have already stated, order 7 is the more pointed one in relation to the acts complained of. Order No. 5 was a general one.
27. But, what does the record portend?
28. From a study of the above exhibits, the original title deeds were forwarded to Kamau Kuria & Company Advocates on 2.11.2020. Dr. Kamau Kuria declined to release the titles on 1.2.2025.
29. Andrew Mmbogori Advocate requested the title documents again on 8.4.2025 on behalf of the company.
30. From the foregoing, there is a tussle among the shareholders about the company’s title deeds.
31. According to the plaintiff, Dr. Kamau Kuria decision to decline to release the titles amounts to contempt by his client, the 1st defendant.
32. The context is relevant here. As earlier noted, there is no specific order compelling the 1st defendant or his advocate to release the title deeds.
33. Therefore, does this case fall within the four corners of contempt of court threshold?
34. In the literary work of Contempt in Modern New Zealand: -

“The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -



- a. The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - b. The defendant had knowledge of or proper notice of the terms of the order;
 - c. The defendant has acted in breach of the terms of the order; and
 - d. The defendant's conduct was deliberate.”
35. Therefore, whereas the 1st defendant breached order 7 of the relevant orders cited, circumstances of the case do not support a finding for contempt of court on the basis of the acts complained of. Other appropriate reprieve will, however, be granted as will be clear later in the ruling.
36. Prayers 2 and 3 fail.

Mandatory injunction

37. The plaintiff also seeks orders directing the 1st defendant to release the plaintiff's title deeds and those belonging to AKM Investments Ltd. Prayers 4 and 5 of the subject application seek mandatory injunctions to compel the 1st defendant and his advocate to release the title deeds.

38. The test is that: -

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a match on the plaintiff a mandatory injunction will be granted on an interlocutory application” (Kenya Breweries Limited & another v Washington O. Okeyo [2002] KECA 284 (KLR) the Court of Appeal citing Halsbury's Laws of England 4th Edn. para 948)

39. This case is among several suits pending before court concerning the plaintiff's shareholding. This is not a clear case which ought to be decided at once in favour of any of the parties. Nor is the request for release of the title deeds to the company for purposes of selling some of the properties, a simple and summary one which can be easily remedied in the circumstances of this case.

40. However, there is absolute necessity to secure the properties of the company in issue here.

41. I do note that, Dr. Kamau Kuria intimated through the letter of 1.2.2025 that his instructions are to institute interpleader proceedings against the relevant party under order 34 of the Civil Procedure Rules.

42. The question is; how to secure these properties.

Release and custody of the title deeds

43. It is particularly relevant that, on the one hand, the 1st defendant claims direct interest in the company. On the other hand, the plaintiff is being run by an interim board of directors through an order of the court. They have intimated to the court that a resolution was made to sell some of the properties during the pendency of the shareholding disputes.

44. Thus, those properties of the company subject of this application cannot be secured in the hands of any of the parties given their rival interests. So as to avoid any party stealing a match upon the other, a



mandatory injunction is in order but the release and custody of the title deed will not be to any of the disputants. Appropriate order shall be made to secure the said properties.

Restraining orders

45. The plaintiff sought an order to restrain the 1st defendant or his agents from interfering with the business, management, operations or affairs of the plaintiff without the plaintiff's express approval and consent or further orders of the court.
46. The tests for granting an interlocutory injunction were established in *Giella v Cassman Brown and Company Limited* [1973] E. A. 385. An applicant ought to establish a prima facie case with a probability of success, irreparable harm that cannot be compensated by damages if the injunction is not granted and that the balance of convenience tilts in favour of granting the injunction. These traditional staple conditions are however to be evaluated within the broader sense of substantive justice provided in *the Constitution*.
47. In the court's considered view, the nature of the order sought through prayer 8 is akin to those issued by the court on 4.10.2024.
48. In the ruling of 4.10.2024, the court considered some of the claims made by the plaintiff against the 1st defendant, including that company funds had been privatized by him using a sum of Kshs. 500,000,000/- as security for personal securities advanced to him or companies associated with him and he also allegedly transferred Kshs. 400,000,000/- to an account held by the 6th respondent.
49. The court found that the plaintiff established a prima facie case and demonstrated that unless the respondent's actions are reversed and restrained, the plaintiff will suffer irreparable loss and damage.
50. The court also found that in any event, the balance of convenience tilts in having a sense of sanity in the running the plaintiff at least for the sake of the insuring public.
51. The court saw it fit to issue the restraining orders and have an interim board of directors to run the affairs of the plaintiff pending the resolution of the issue of shareholding and directorship by the court that it dealing with the arbitral award.
52. In the ruling dated 30.1.2025, this court underscored that the plaintiff is an insurance company engaged in insuring the general public. Thus, the public interest in ensuring the company runs well for the benefit of the policy holders as well as third parties' liability covered under the insurance policies issued by the plaintiff, remains paramount.
53. Accordingly, in the circumstances, the court finds that the plaintiff has met the threshold for the restraining orders sought.
54. Prayer 8 is merited.

Disposal

55. In conclusion, the plaintiff's application dated 9.5.2025 is partially successful. The court makes the following specific orders: -
 1. An order is hereby issued restraining the 1st defendant or his agents from interfering with the business, management, operations or affairs of the plaintiff without the plaintiff's express approval and consent or further orders of the court. This merely re-emphasizes the previous orders of this court.



2. The title deeds (for the company and AKM Investment Ltd) held by the 1st defendant through his legal counsel Kamau Kuria and Company Advocates shall be deposited by him or his legal counsel Kamau Kuria and Company Advocates, with the Deputy Registrar of this Division within 14 days of today.
3. No orders as to costs.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 2ND DAY OF DECEMBER, 2025

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**F. GIKONYO M
JUDGE**

In the Presence of:

Dr. Kuria for 1st, 2nd and 4th defendants

Chepkwony for Lubano for 7th defendant

Mbogori for Plaintiff

Ashioya for Havi for 11th defendant

Ms. Makori for 4th defendant

Kihanga for 16th defendant

Ms. Yala for Nyaosi for 9th defendant

Mwangi for Rimui for 8th defendant

Ms. Morara for 6th defendant

Kibara for 12th defendant

