

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
COMMERCIAL SUIT NO. E006 OF 2025

WARSAME DORE.....1ST
PLAINTIFF/APPLICANT

ABDULKADIR DHORRE.....2ND
PLAINTIFF/APPLICANT

MOHAMED ALI IBRAHIM.....3RD
PLAINTIFF/APPLICANT

ONE FLY AFRICA TRAVEL & TOUR LIMITED.....4TH
PLAINTIFF/APPLICANT

VERSUS

AFRICAN EXPRESS AIRWAYS (KENYA) LIMITED.....1ST
DEFENDANT/RESPONDENT

AFRICAN AIRLINES INTERNATIONAL LIMITED.....2ND
DEFENDANT/RESPONDENT

AND

EQUITY BANK (KENYA) LIMITED.....1ST INTERESTED PARTY

THE REGISTRAR OF COMPANIES.....2ND INTERESTED PARTY

RULING

1. This ruling is in respect of the two Notice of Motion applications dated 2nd January 2025 and 14th March 2025.

2. The first motion dated 2nd January 2025 was predicated on the grounds in the application and the supporting affidavit of Warsame Dore sworn on 2nd January 2025.
3. The 1st and 2nd Respondents have opposed the application through the replying affidavit of Captain Musa Hassan Bulhan sworn on 16th January 2025.
4. Parties canvassed the application by way of written submissions which I have considered.
5. The principles for granting injunction were settled in the celebrated case of **Giella v Cassman Brown (1973) EA 358**, a position which has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR** where the Court of Appeal held that:

“In an interlocutory injunction application, the Applicant has to satisfy the triple requirements to (a) establishes his case only at a prima facie level, (b) demonstrates 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 favor.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.”

6. The Respondents have provided a Certificate of Registration from the Kenya Civil Aviation Authority dated 8th January 2025, showing the aircraft 5Y-AXG was registered to Premier Airlines. This evidence is uncontroverted. The law is clear that courts do not act in vain. Granting an injunction to restrain a sale that has already been conclusively completed would be an exercise in futility.
7. Consequently, the prayer for an injunction to restrain the sale of the specific aircraft CRJ-200, Registration 5Y-AXG has been overtaken by events and is hereby disallowed.
8. The applicants' claim for specific performance is anchored on an alleged undertaking and agreements. However, the respondents have placed before the Court a Consent Order from the High Court in *Misc. Civil App. No. E023 of 2024*. This order, dated 11th October 2024, definitively sets out the shareholding and directorship of the 1st respondent. The Applicants are not parties to that order, nor are they listed as shareholders or directors therein.
9. The proper avenue for the Applicants, if they believe their rights have been infringed, is to challenge that consent order in the appropriate manner or to pursue their claim for a beneficial interest in the shares in the main suit, which may involve applications to vary or set aside the said order. The prayer for specific performance, at this interim stage, is not tenable and is thus disallowed.
10. The application dated 2nd January 2025 lacks merit and therefore, must fail.
11. The second application dated 14th March 2025 seeks the following orders;

- i. Spent*
- ii. Spent*
- iii. Spent*
- iv. Spent*
- v. Spent*
- vi. Spent*
- vii. That costs of the application be provided for*

12. The grounds of the application are set out in the 1st Applicant's supporting affidavit sworn on 14th March 2025 and his supplementary affidavit sworn on 18th July 2025.
13. The application is opposed through the replying affidavit of Captain Musa Hassan Bulhan sworn on behalf of both Respondents on 27th January 2025.
14. The court takes note that the 1st Respondent filed a Notice of Change of Advocates on 12th March 2025, appointing *Sagana, Biriq & Muganda Advocates* to act in place of *Igeria & Ngugi Advocates*.
15. In the case of **Daniel Kaminja & 3 others (suing as Westland Environment Caretaker Group) v County Government of Nairobi [2019] eKLR**, Mativo, J. (as he then was) stated that a matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law.
16. The legal principle is clear, courts do not act in vain or issue orders over matters already resolved.
17. Consequently, prayers 2, 3, 4, 5, and 6 of the Notice of Motion dated 14th March 2025, to the extent they seek to restrain *Igeria & Ngugi Advocates* from acting for the 1st

respondent, are spent and overtaken by events. They are hereby struck out.

18. The remaining and crucial issue is whether Igeria & Ngugi Advocates should be barred from representing the 2nd Defendant. The Applicants' case rests on two pillars: conflict of interest/breach of fiduciary duty, and the advocate-witness rule.
19. An advocate's duty to a client is fiduciary in nature. This duty includes the obligations of loyalty, confidentiality, and the duty not to act against a former client in a matter substantially related to the previous retainer. This principle is enshrined in the common law and the ethical codes governing the legal profession.
20. In the case of **Kenya Woolen Mills Ltd and another v M/S Kaplan & Stratton Advocates Civil Appeal No.55/93**, the Court of Appeal held that:

“The Advocate should be wary to act for one client against the other or clients in a subsequent action or litigation concerning the original transaction or the subject matter for which he acted for the client. The reason for this is not far-fetched. The information or knowledge so acquired and which is confidential by reason of the fiduciary relationship between the opponent client and the common Advocate will place the other client or clients at a disadvantage occasioning prejudice if that knowledge or information is used against them by the common Advocate in a subsequent litigation

arising from the original transaction or subject matter for which he acted for the clients.”

21. The applicants have demonstrated that Mr. Igeria acted for both sides and drafted the undertaking and loan agreements central to the dispute. He also serves as Company Secretary for the 2nd Defendant. There is a clear potential for conflict and a legitimate apprehension by the Applicants that confidential information shared during the joint retainer could be used against them. The duty of an advocate to preserve client confidentiality is sacrosanct.
22. The 2nd Respondent's argument that it was not a party to the Loan Agreement is technically correct but, in my view, overly simplistic. The main suit involves both Respondents. The pleadings and annexed documents reveal that the affairs of the 1st and 2nd Respondents are closely interlinked. The same director, Captain Bulhan, deposes for both. The alleged promise to allot shares and appoint directors, which is part of the Applicants' claim, involves both corporate entities. The Letter of Undertaking dated 14th December 2023, which the Applicants allege was also prepared by Mr. Igeria, is central to these promises.
23. Therefore, the subject matter of the current suit is substantially related to the retainer Mr. Igeria had with the Applicants. The information he acquired while acting for the Applicants regarding their financial dealings, intentions, and vulnerabilities in relation to the 1st Respondent's operations is directly relevant to the defence being mounted by the 2nd Respondent, which is under the common control of the same individuals.

24. The 2nd Respondent's reliance on the constitutional right to choose an advocate (Articles 48 and 50) is acknowledged. However, this right is not absolute. It is tempered by the court's inherent jurisdiction and duty to protect the integrity of the judicial process and ensure fairness.
25. I therefore find that there is a real and appreciable risk that confidential information imparted to Mr. Igeria by the applicants could be used, consciously or unconsciously, to their prejudice in this litigation. The firm of Igeria & Ngugi Advocates is therefore in a position of conflict of interest.
26. Consequently, I hereby issue the following orders:
- a. The Notice of Motion dated 2nd January 2025 is dismissed.***
 - b. The Notice of Motion dated 14th March 2025 is partially allowed as against the 2nd Defendant only.***
 - c. A restraining order is hereby issued against the law firm of Igeria & Ngugi Advocates, its partners, associates, servants, or agents, from representing or continuing to represent the 2nd respondent in this suit.***
 - d. The 2nd Defendant is granted fourteen (14) days from the date of this ruling to regularize its representation by appointing new advocates and filing the requisite Notice of Change of Advocates, failing which it shall be deemed to be acting in person.***
 - e. Each party shall bear its own costs.***

RULING delivered virtually, dated and signed at **NAIROBI**

This **20th** day of **January** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Lakicha for Plaintiffs

Mr. Biriq for 1st Defendant

Mr. Mbaji for 2nd Defendant

Court Assistant: *Carlos*