

REPUBLIC OF KENYA
HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND TAX DIVISION
COMMERCIAL SUIT NO. E029 OF 2024

CAFFI RESTAURANT LIMITED.....1ST
APPLICANT

CAFFI GROUP OF COMPANIES LIMITED.....2ND
APPLICANT

VERSUS

MARAGI HOUSING COMPANY LIMITED.....1ST
DEFENDANT

DAVID KARUGO MUGO.....2ND
DEFENDANT

PATRICK MUGO KARUGO T/A

INTER ARCHITECTS LIMITED.....3RD
DEFENDANT

RULING

1. Before this Court are two related applications filed by the Plaintiffs. The first is the Notice of Motion dated 25th January 2024, subsequently reinforced by a further application dated 13th December 2024, brought pursuant to Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Order 40 Rules 1, 2 and 3, and Order 51 Rule 1 of the Civil Procedure Rules. The Plaintiffs seek interlocutory injunctive orders restraining the Defendants, whether by themselves, their agents, servants, or otherwise, howsoever, from selling, charging, transferring,

leasing or in any manner dealing with Land Reference No. 36/VII/511 (Original No. 29/1) pending the hearing and determination of the suit.

2. The application is supported by the affidavit of Ahmed Abdullahi Abdille, sworn on 25th January 2024 and further affidavits filed pursuant to the subsequent application. The Plaintiffs' case is that the parties entered into a binding joint venture arrangement for the development of the suit property, evidenced by an offer letter dated 6th January 2023 and an acceptance letter dated 20th February 2023. Under the said arrangement, the Plaintiffs were to finance and develop the project while the 1st Defendant was to contribute the land.
3. It is averred that pursuant to the said understanding, the Plaintiffs paid a sum of Kshs. 2,400,000/= being part of the agreed rent replacement fees, and undertook preparatory steps towards implementation of the project. The Plaintiffs contend that the Defendants have since reneged on the arrangement, declined to execute the formal Joint Venture Agreement, and are threatening to dispose of or otherwise encumber the suit property, thereby imperiling the substratum of the suit.
4. The application is opposed. The 1st Defendant, through a replying affidavit sworn on 28th February 2024 by its Chairman, James Thuo Mwangi, contends that the Plaintiffs have no cause of action against it. It is deponed that there was no concluded joint venture agreement, and that the

Plaintiffs are in effect inviting the Court to compel the Defendants to enter into a contract. The 1st Defendant avers that there were no board or shareholders' resolutions authorizing the alleged transaction; that the 2nd Plaintiff is a stranger to the purported arrangements; and that the suit and applications are premature, speculative, and an abuse of the court process. It is further alleged that the proposed joint venture was mired in controversy, including allegations of conflict of interest, and that the acceptance letter dated 20th February 2023 was executed without corporate authority.

5. A further replying affidavit was sworn on 14th March 2025 by Francis Wagocho Wanjohi, who denies having signed the alleged acceptance letter of 20th February 2023 and asserts that the signature attributed to him therein is a forgery.
6. The 2nd Defendant, David Karugo Mugo, a co-founder and former Chairman of the 1st Defendant, swore a replying affidavit on 19th March 2025. He depones that there was an intention by the parties to enter into a joint venture for the development of the suit property; that the Plaintiffs submitted a proposal which was accepted; that the 2nd Plaintiff was to pay a rent replacement fee of Kshs. 500,000/= per month for 24 months; and that the proposed sharing ratio was 65% to the 2nd Plaintiff and 35% to the 1st Defendant. He attributes the failure of the project to internal wrangles within the 1st Defendant company. The 3rd

Defendant, Patrick Mugo Karugo, filed an affidavit largely mirroring these averments.

7. Upon directions of the Court, the two applications were heard together, the issues raised therein being closely intertwined.

Analysis and determination

8. I have carefully considered the pleadings, the affidavits on record, and the submissions by counsel. The issues that arise for determination are whether the Plaintiffs have satisfied the threshold for the grant of interlocutory injunctive relief and, if so, what orders ought to issue.
10. The principles governing the grant of interlocutory injunctions are well settled in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**. An applicant must demonstrate: first, a prima facie case with a probability of success; second, that they stand to suffer irreparable injury which cannot be adequately compensated by an award of damages; and third, if the Court is in doubt, that the balance of convenience tilts in their favour.
11. The sequential and distinct nature of these principles was emphatically restated by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, where the Court held:

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to

be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

The appellate court further cautioned that:

“If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

12. A prima facie case was defined in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as:

“A case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal.”

13. The Plaintiffs seek interlocutory injunctive orders restraining the Defendants from dealing with the suit property pending the determination of the suit. In support, the Plaintiffs rely on the offer dated 6th January 2023, the acceptance letter dated 20th February 2023, and proof of payment of Kshs. 2,400,000/=, and averments that they undertook preparatory steps towards the development project.

14. The Defendants, in response, contend that the alleged joint venture never crystallized into a binding contract, that negotiations stalled due to lack of authorization by shareholders and directors, and that the Plaintiffs' payments

were either premature or refunded. They further argue that the Plaintiffs are, in effect, inviting the Court to impose a contract upon unwilling parties.

12. At this interlocutory stage, the Court is not called upon to determine conclusively whether a binding joint venture agreement exists or whether the Plaintiffs are ultimately entitled to specific performance. The Court's task is limited to assessing whether the Plaintiffs have demonstrated an arguable case deserving of preservation pending trial.
13. A prima facie case must not ultimately succeed at trial, but one that discloses an arguable right which has apparently been infringed and which calls for an answer from the opposite party. In the present matter, it is common ground that no formal Joint Venture Agreement was executed. What is hotly contested is whether the correspondence relied upon by the Plaintiffs constituted a binding and enforceable contract, or merely an expression of intention subject to fulfilment of further conditions, including corporate approvals.
14. The Defendants have placed before the Court material suggesting that the alleged acceptance letter is disputed, that corporate authorization was lacking, and that the Plaintiffs are, in effect, seeking to have the Court compel the Defendants to enter into a contractual relationship. At this interlocutory stage, the Court is not required to make definitive findings on the validity or otherwise of the contested documents. However, the existence of serious

disputes as to authority, execution, and intention points to a relationship that was, at best, still in the realm of negotiations.

15. Further, even assuming that the Plaintiffs expended monies in anticipation of the project, such loss is quantifiable and, if ultimately proved, may be compensable by an award of damages. The Plaintiffs have not demonstrated that the alleged injury is of such a nature that damages would not be an adequate remedy.
16. On the question of irreparable harm, the Plaintiffs argue that disposal or encumbrance of the suit property would defeat the substratum of the suit. While that argument carries some force, it must be weighed against the equally weighty consideration that the Court should be slow to restrain a registered proprietor from dealing with its property where the applicant's rights are uncertain and disputed, and where the underlying claim is founded on an unconsummated commercial arrangement.
17. The balance of convenience, in my view, tilts in favour of maintaining the status quo in a manner that does not unduly fetter the proprietary rights of the Defendants, while preserving the Plaintiffs' ability to pursue their substantive claim. In the circumstances of this case, that balance does not favour the grant of the far-reaching injunctive orders sought.

Disposition

18. In the result, I find that the Plaintiffs have not satisfied the threshold for the grant of interlocutory injunctive relief. The Notice of Motion dated 25th January 2024, as reinforced by the application dated 13th December 2024, is therefore declined.

19. Costs of the applications shall abide by the outcome of the main suit.

It is so ordered.

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

This **29th** day of **January** 2026.

P.M. MULWA

JUDGE

In the presence of:

Mr. Lutukai h/b for Mr. Madowo for Plaintiff/Applicant

Mr. Ng'ang'a for 1st Defendant

Mr. Mwiti for 2nd and 3rd Defendants

Court Assistant: *Carlos*