



**Shawa Suppliers & General Contractors Limited v County Government of Nakuru & 3 others (Civil Case E017 of 2025) [2026] KEHC 388 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 388 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E017 OF 2025  
SM MOHOCHI, J  
JANUARY 15, 2026**

**BETWEEN**

**SHAWA SUPPLIERS & GENERAL CONTRACTORS LIMITED ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF NAKURU ..... 1<sup>ST</sup> DEFENDANT**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF  
NAKURU ..... 2<sup>ND</sup> DEFENDANT**

**THE CHIEF OFFICER –HEALTH SERVICES, COUNTY GOVERNMENT OF  
NAKURU ..... 3<sup>RD</sup> DEFENDANT**

**THE CHIEF OFFICER –FINANCE/COUNTY TREASURY, COUNTY  
GOVERNMENT OF NAKURU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is Notice of Motion Application dated 18<sup>th</sup> November 2025 filed pursuant to Order 40 Rule 1(a), 2, 4 & 8 of the Civil Procedure Rules, 2010, Section 1A, 1B & 3A of the [Civil Procedure Act](#) and all enabling provisions of the law.
2. The Applicant seeks the following reliefs;
  - a. Spent
  - b. Spent
  - c. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue a temporary injunction restraining the Respondents, their employees, servants and/or agents from appointing or authorizing any third party to take over, interfere with, or continue



the Proposed Construction of Out-Patient and In-Patient Facilities at Njoro Level 4 Hospital, being the subject of Tender No. CGN/ONT/Health/11/2020-2021.

- d. That the costs of this application be provided for.
3. The Application is premised upon the Supporting Affidavit of Livingstone Wangondu is grounded on the following thirteen (13) grounds;
- i. That, the Plaintiff was the successful contractor under Tender No. CGN/ONT/Health/11/2020-2021 for the Proposed Construction of Out-Patient and In-Patient Facilities at Njoro Level 4 Hospital. The Plaintiff duly executed and mobilised to site, performed works strictly in accordance with the Contract, the Bills of Quantities, and the Conditions of Contract, including Clauses 33 to 37 which govern termination, payment, default, and dispute resolution. The Plaintiff therefore has enforceable contractual rights which are presently under threat.
  - ii. That, the Plaintiff submitted a Payment Request dated 8th October 2024, which was received and stamped by the Chief Officer - Infrastructure on 30<sup>th</sup> October 2024. The County, however, failed to issue the requisite invoice that triggers the Project Manager's issuance of a Payment Certificate, and in consequence, withheld payment. This failure obstructs the sequential payment process provided under Clause 36 of the Contract, materially breaches the Contract, and prejudices the Plaintiff's right to receive lawful payment for work already performed.
  - iii. That, pursuant to Clause 37 of the Contract, the Plaintiff formally referred the dispute arising from the 8/10/2024 Payment Request to arbitration through a letter dated 17<sup>th</sup> January 2025. The Defendants failed and/or refused to take the necessary steps to refer the dispute to arbitration or otherwise engage in the contractual dispute resolution process. This constitutes a breach of Clause 37 and denies the Plaintiff its contractual right to have disputes resolved through arbitration.
  - iv. That, notwithstanding the ongoing dispute and unprocessed Payment Request, the 1<sup>st</sup> Defendant re-advertised the same works under Tender No. CGN/MOH/ONT/001/2025-2026 in or about 6th November 2025. This re-advertisement was conducted without compliance with the contractually mandated termination procedures under Clause 33, without satisfying payment obligations under Clauses 34-36, and without following the dispute resolution mechanism under Clause 37. The re-advertisement is therefore unlawful, undermines the Plaintiff's contractual rights, and exposes the Plaintiff to immediate and irreparable prejudice.
  - v. That, unless restrained, the Defendants' intended actions in re-advertising the works and appointing a replacement contractor will cause irreparable harm to the Plaintiff. Such harm includes:
    - a. loss of the opportunity to complete the works lawfully contracted;
    - b. financial loss, including inability to pay subcontractors, increased financing costs, and interruption of cashflow;
    - c. reputational damage and commercial prejudice; and
    - d. rendering nugatory any relief that this Honourable Court may grant in the substantive suit.



- vi. That, the delay in completion of the works under the Contract has been occasioned primarily by the Defendants' failure to issue invoices and to certify Payment Requests in a timely manner, as required under Clause 36 of the Contract. On multiple occasions, the Plaintiff's Payment Certificates were issued late, and payment delays have consistently disrupted cash flow, slowed mobilization, and impeded the timely execution of the works. The Plaintiff's letter dated 17<sup>th</sup> January 2025 specifically highlighted that the delay in payments has materially affected the progress of construction, yet the Defendants, rather than addressing this issue, unlawfully terminated the Contract.
  - vii. That, the Defendants have at no time provided justification or taken any steps to rectify the delays caused by late payments, and have instead acted in a manner that penalizes the Plaintiff for the Defendants' own administrative failures. The termination of the Contract and refusal to raise vouchers or authorize payments is therefore unreasonable, unlawful, and amounts to a breach of the Plaintiff's contractual rights.
  - viii. That, the Plaintiff's ability to continue, complete, and receive full value for the works already executed under the Contract is inextricably linked to the measurement and certification of actual work done. The Defendants' intended re-advertisement of the works and replacement of the contractor, without completing proper measurement and payment for work already performed, will result in irreparable commercial loss and prejudice to the Plaintiff.
  - ix. That, the Plaintiff has no other remedy available that is as effective as the intervention of this Honourable Court to restrain the Defendants' unlawful actions. The Plaintiff seeks preservation of the status quo through an injunction as the only effective means to protect its contractual rights pending the determination of the substantive suit.
  - x. That, the circumstances are urgent within the meaning of Order 40 Rule 1 of the Civil Procedure Rules, 2010, as the Plaintiff faces imminent and ongoing harm due to the Defendants' intended actions in implementing the re-advertised tender. Without urgent intervention, the Plaintiff's rights will be irreparably prejudiced and the subject matter of this suit will be destroyed.
  - xi. That, the Applicant stands to suffer substantial loss, operational disruption, reputational damage, and irreversible financial injury if the orders sought are not granted.
  - xii. That, the injunctive orders sought will preserve the subject matter of this suit and ensure compliance with the law pending determination of the Applicant's claim.
  - xiii. That, it is in the interests of justice and fairness that the Respondents be restrained from conducting or proceeding with the impugned procurement until this matter is heard and determined.
  - xiv. That, it is in the interest of the administration of justice that this honorable court grants the orders sought in this application.
4. The Application is further supported by the sworn Affidavit of Livingstone Wangondu Thion'go.
  5. The court had directed that service be effected and is persuaded of the same from the return of service on record.
  6. Notwithstanding proper service by Julius Kamotho Njaga the Defendants have not appeared or filed any response and thus the Application is undefended despite the Applicants compliance with all directions including filing of written submissions that I have scrutinized.



7. I am persuaded to find in favor of the Applicant in this instance by dint of the Application being uncontested.
8. Accordingly, I do not find merit in the Application and allow the same on the following terms;
  - a. That, an Order of Temporary injunction, restraining the Respondents, their employees, servants and/or agents from appointing or authorizing any third party to take over, interfere with, or continue the Proposed Construction of Out-Patient and In-Patient Facilities at Njoro Level 4 Hospital, being the subject of Tender No. CGN/ONT/Health/11/2020-2021 is hereby issued pending hearing and determination of this suit.
  - b. I award costs of the Application to the Applicant.

It is ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 15<sup>TH</sup> DAY OF JANUARY 2026**

.....

**MOHOCHI S. M.**

**JUDGE**

