



**Unga Limited v Millers (Commercial Case E006 of 2025)
[2026] KEHC 320 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 320 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
COMMERCIAL CASE E006 OF 2025
AK NDUNG’U, J
JANUARY 22, 2026**

BETWEEN

UNGA LIMITED APPLICANT

AND

DAIGA MILLERS RESPONDENT

RULING

1. This ruling resolves the notice of motion dated 06/11/2025. The Applicant seeks the following orders;
 - i. Spent
 - ii. The Honourable court noting the ongoing detrimental infringement and passing off activities by the Defendant to both the Plaintiff company and consumers, be pleased to ex-parte order that a temporary injunction do issue restraining the Respondent whether by itself, its directors, officers, servants, employees or agents, licensees, franchises or by any of them or otherwise howsoever from importing, packaging, distributing, marketing, advertising, promoting, manufacturing, selling, offering for sale or in any manner disposing off maize meal products or other similar products of the Plaintiff company bearing the HODARI trademark or in any manner passing off any goods particularly but not limited to maize meal products manufactured or marketed by the Plaintiff company under the HODARI trademark as goods manufactured and sold by the Plaintiff or any other name or designation bearing a close resemblance thereto pending hearing and determination of the application or the suit.
 - iii. Spent
 - iv. That pending hearing of the application and suit, the court be pleased to issue orders for;
 - a. The delivery of all infringing products, documents, files, packaging materials, cartons, printing blocks, bromides, prints, invoices, receipts, articles or equipment relating



to the importation, purchase, manufacture, sale or supply of products particularly and not limited to maize meal products or marketed under the infringing mark HODARI which are being passed off as the goods of the Plaintiff Company within the Defendant's possession, custody or power, which would otherwise offend the provisions of the foregoing injunction.

- b. The delivery of all documents relating to importation, purchase, distribution, sell or offering for sale of products by the Defendant/Respondent bearing the Hodari trademark.
 - c. Restraining the Defendant/Respondent from importing, distributing, selling or offering and displaying for sale, advertising, marketing, promoting, packaging, manufacture, in any manner disposing of maize meal products or other similar products of the Plaintiff company bearing the HODARI trademark or in any manner passing off any goods particularly and not limited to maize meal products manufactured or marketed by the Plaintiff company under the HODARI Trademark as goods manufactured and sold by the Plaintiff or any other name or designation bearing a close resemblance thereto
 - d. Restraining the Defendant/Respondent from importing, distributing, selling or offering and displaying for sale, advertising, marketing, promoting, packaging, manufacture, in any manner disposing of maize meal products or other similar products with get up similar to that of the Applicant's products.
 - e. The Respondent be ordered to disclose the names and address of all those by whom it has supplied goods falling within the provisions of the orders sought above together with sales and details of quantities so supplied and the price thereof.
 - f. An enquiry as to damages or alternatively at the Applicant's option an account of profits made by the Respondent as a result of the aforesaid infringement and passing off by the Respondent and an order of payment of any sums found due together with interest thereto at court rates.
 - v. Costs of the application be borne by the Respondent.
 - vi. The court be pleased to make such further orders as it deems just and fit in the interest of justice.
2. The application is based on the grounds on the face thereof and is supported by an affidavit of Bramwel Wambwa, national sales manager of the Applicant's company. He deposed that the Applicant is the registered owner of the HODARI trademarks in Kenya, Tanzania, Zanzibar and Uganda. The Applicant extensively advertised and sold products bearing the name HODARI trademark locally and within the East Africa region thereby developing a lot of goodwill and reputation. That around November 2024, the Applicant found out that the Respondent was using the HODARI trademark in Kenya in relation to manufacture and sale of maize meal products without authorisation from the Applicant hence its conduct amount to trademark infringement, tort of passing off in terms of common law, unfair competition and violation of consumer protection provisions.
 3. That the use of HODARI trademark and get up is a clear attempt by the Respondent to create an association with the Applicant and its reputation and goodwill in the Kenyan market. Respondent's conduct is causing confusion in the market that the goods and services produced, manufactured, sold, distributed, exported, stored, warehoused, packaged, exported or in any other exposed to consumers are the goods of the Applicant or the Respondent is associated with the Applicant, or the Respondent



had been authorised to use the HODARI trademarks. The Respondent is therefore taking undue advantage of the Applicant's goodwill and reputation as well as causing damage to the Applicant.

4. He deposed that unless the Respondent is permanently restrained by this court and ordered to destroy all stock bearing the HODARI trademarks, the Respondent shall continue to pass off its goods and services as the goods of the Applicant causing confusion in the market that its goods originate from the Applicant deceiving the public that it is associated or has been permitted to use Applicant's trademarks hence unjustly enriching itself.
5. The Respondent only entered appearance through their advocate but did not file a response to the application.
6. The application was canvassed by way of written submissions. Counsel for the Applicant submitted that the Applicant has established a prima facie case with probability of success since it has proved that it is the registered proprietor of HODARI trademark, the Respondent has used it in its product without the authority and consent of the Applicant, has proved irreparable injury that cannot be compensated by way of damages and the facts provided enable this court to decide in its favour on a balance of convenience. Applicant relies on Civil Case No. E001 of 2021 Puma Se vs Jonh Githenduka Mburu; Case No. E065 of 2020 Alpex Consulting Africa Limited & 2 others and Associates Consulting Africa Limited & 5 others among other cases.
7. I have considered the application and submissions made. The Applicant seeks temporary injunction to restrain the Respondent from using Hodari trademarks in its goods. The Applicant stated that it is the registered owner of HODARI trademarks in Kenya, Tanzania, Zanzibar and Uganda as set out below; Kenya, trade mark registration number 24901 'HODARI Brand Device' Tanzania, trade mark registration number 26377 'HODARI Packet Design' Zanzibar, trade mark registration number 260/98 'HODARI Device' Uganda, trade mark registration number 22085 'HODARI and Windmill Device, 22100 'Famila HODARI & Windmill Device' and 22080' Hodari Packet Design'
8. Certificate of such registrations have been attached in the application.
9. It is trite law that in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to;
 - (a) establish its case only at a prima facie level,
 - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) shows the balance of convenience is in its favour.
10. This was enunciated in the celebrated case of *Giella vs Cassman Brown & Company Limited* (1973) E A 358. In *Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 the court fashioned a definition for "prima facie case" in civil cases in the following words:

"In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."



11. I have reviewed the documents attached by the Applicant which show that the Applicant's products bore the name HODARI. The Applicant also attached a maize meal product from Daiga Millers, the Respondent herein bearing the name HODARI amongst other names.
12. It is trite that in order to succeed in an action for infringement or breach of a trademark, the Plaintiffs ought to prove that it is the registered proprietor of the mark, that the alleged infringement was a mark identical which, or so nearly, resembles that of the registered mark so as to be likely to deceive or cause confusion in the course of trade or in connection with the provision of services in respect of which it is registered, that the use of the mark is without consent or authority of the proprietor; and that the use of the mark is such that it is likely to cause injury or prejudice to the proprietor or licensee of the trade mark (see *Solpia Kenya Limited v Style Industries Limited & Another* ML HCCC No. 138 of 2014 [2015] eKLR and *Pastificio Lucio Garofalo S.P.A v Debenham & Fear Ltd* ML HCCC No. 823 of 2010 [2013] eKLR).
13. The court in *Aktiebolaget Jonkoping Vulkan Industricksfa – Briksaktiebolag v East Africa Match Company Ltd* [1964] E.A. 62, opined that:

“It is for the plaintiff company to prove that there is a resemblance between the two marks, and that such resemblance is deceptive. It is also a well-established principle of law that it is the duty of the judge to decide whether the trademark complained of does so nearly resemble the registered trademark as to be likely to deceive or cause confusion in the minds of the public. From that duty, the judge cannot abdicate.”
14. In determining whether the offending mark was likely to deceive or cause confusion Tuiyott J., in *Landor LLC and Wpp Luxembourg Gamma Sarl v Wagude Lui t/a Landor & Associates & 2 others* ML HCCC No. 266 of 2016 [2019] eKLR observed that:

“The second limb and which is more contested is whether the Plaintiffs have proved that the mark said to be offending is likely to deceive or cause confusion in the connection with the provision of services provided by the Plaintiff. To be resolved first is the nature of what needs to be proved and the manner in which that has to be done. Looking at the language used in Section 7, I would have to agree with Counsel for the Plaintiffs that actual deception or confusion need not be proved. It is enough to show that deception or confusion is likely. Nonetheless, there will be occasion when it will be necessary to prove actual deception or confusion. For instance where the Plaintiff seeks damages for the infringement. Actual deception or confusion can inform the Damages to be awarded. As to the manner of proving that deception or confusion is likely to ensue, it has to be remembered that whilst witnesses will have their positions and views as to whether deception or confusion is likely, the final call belongs to the Judge who must assign reasons why S[he] holds a certain view. Regarding the approach it has to be that, “... a value judgment ... based on a global appreciation of the two Marks and overall impression that they leave in the context of the underlying purpose of a trademark which is that it is a badge of origin”.
15. Having reviewed the attached documents, it is my view that using the name HODARI by the Respondent on their maize meal products, the same products that the Applicant deals with is likely to cause confusion as to whether the Respondent is actually the Applicant. The court in *M-Kopa Kenya Limited v Njenga t/a M-Kopo Kastomer Care & Accessories* [2025] KEHC 366 (KLR) held that:

“Having considered the names “M-Kopo Kastomer Care and Accessories” and “M-Kopa Kenya Limited,” I note a striking similarity between them. In my view, the average consumer



may not immediately discern the difference between the two and may, therefore, be led to believe that both represent the same product or service.”

16. With regards as to whether the Applicant deserves the orders sought, it is my view that confusion as to whether the Respondent is actually the Applicant and vice versa in the course of their trade will surely damage Applicant’s reputation, goodwill and profits, which cannot be arrested if an injunction is not issued at this point as the loss to the Applicant stand to suffer could be of such monetary magnitude that it cannot be ascertained and/or compensated by way of damages. The same goes for their goodwill and reputational damage.
17. In the premises therefore, the application before court has merit. I allow the same and make the following orders;
 1. An order of injunction be and is hereby issued restraining the Respondent whether by itself, its directors, officers, servants, employees or agents, licensees, franchises or by any of them or otherwise howsoever from importing, packaging, distributing, marketing, advertising, promoting, manufacturing, selling, offering for sale or in any manner disposing off maize meal products or other similar products of the Plaintiff company bearing the HODARI trademark or in any manner passing off any goods particularly but not limited to maize meal products manufactured or marketed by the Plaintiff company under the HODARI trademark as goods manufactured and sold by the Plaintiff or any other name or designation bearing a close resemblance thereto pending hearing and determination of this suit.
 2. That pending the determination of the suit herein an order be and is hereby issued for:-
 - (i). The delivery of all infringing products, documents, files, packaging materials, cartons, printing blocks, bromides, prints, invoices, receipts, articles or equipment relating to the importation, purchase, manufacture, sale or supply of products particularly and not limited to maize meal products or marketed under the infringing mark HODARI which are being passed off as the goods of the Plaintiff Company within the Defendant’s possession, custody or power, which would otherwise offend the provisions of the foregoing injunction.
 - (ii). The delivery of all documents relating to importation, purchase, distribution, sell or offering for sale of products by the Defendant/Respondent bearing the Hodari trademark.
 - (iii). Restraining the Defendant/Respondent from importing, distributing, selling or offering and displaying for sale, advertising, marketing, promoting, packaging, manufacture, in any manner disposing of maize meal products or other similar products of the Plaintiff company bearing the HODARI trademark or in any manner passing off any goods particularly and not limited to maize meal products manufactured or marketed by the Plaintiff company under the HODARI Trademark as goods manufactured and sold by the Plaintiff or any other name or designation bearing a close resemblance thereto
 - (iv). Restraining the Defendant/Respondent from importing, distributing, selling or offering and displaying for sale, advertising, marketing, promoting, packaging, manufacture, in any manner disposing of maize meal products or other similar products with get up similar to that of the Applicant’s products.
 3. Costs of the application be borne by the Respondent.



DATED SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JANUARY 2026.

A.K. NDUNG’U

JUDGE

