



REPUBLIC OF KENYA



**Dry Associates Limited & 3 others v Karanja & 8 others (Commercial Case 536 of 2011)
[2026] KEHC 1465 (KLR) (Commercial and Tax) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 536 OF 2011
MN MWANGI, J
FEBRUARY 13, 2026**

BETWEEN

**DRY ASSOCIATES LIMITED 1ST PLAINTIFF
HORSE ASSOCIATES OF KENYA 2ND PLAINTIFF
DAVID HENRY GRAY 3RD PLAINTIFF
DAUDI N. NTURIBI 4TH PLAINTIFF**

AND

**TIMOTHY KARUNGU KARANJA 1ST DEFENDANT
SIRIUS SOLUTIONS LIMITED 2ND DEFENDANT
MERIDIAS CAPITAL LIMITED 3RD DEFENDANT
BLUECREST HOLDINGS LIMITED 4TH DEFENDANT
DIEFEL INVESTMENTS LIMITED 5TH DEFENDANT
GRAY PROPERTIES 6TH DEFENDANT
DAL WEALTH MANAGEMENT LIMITED 7TH DEFENDANT
EQUITORIAL COMMERCIAL BANK LIMITED 8TH DEFENDANT
CROWN BERGER LIMITED 9TH DEFENDANT**

RULING

1. The plaintiffs filed a Notice of Motion application dated 28th November 2011 under the provisions of Sections 1A, 1B, 3A & 63 of the [Civil Procedure Act](#), Order 39 Rules 1, 5, 7 & 8 and Order 40 Rules 1,



- 2, 3, 4 & 8 of the Civil Procedure Rules, 2010, Section 179 of the *Evidence Act*, and all other enabling provisions of the law. The plaintiffs pray for orders of temporary injunction restraining the 1st to 7th defendants from selling, transferring, or otherwise dealing with their shares in listed companies at the Nairobi Securities Exchange, and for the Central Depository and Settlement Corporation and several investment firms and insurers to freeze specified accounts and policies and furnish full statements and records to the plaintiffs' Advocates.
2. The plaintiffs also pray for orders to freeze bank and SACCO accounts of the 1st to 7th defendants, to compel disclosure of complete financial statements and inventories of movable and immovable assets, and to restrain the defendants from removing assets from the Court's jurisdiction. In addition, the plaintiffs seek orders of injunction against disposal or encumbrance of specified parcels of land and a motor vehicle, registration of such orders at the relevant Land Registries, and provision of abstracts of title, orders compelling third parties to produce certified financial and transactional documents, an order for the 1st defendant to furnish security of Kshs.36,400,000/=, to account for the acquisition and ownership of DaRaja Retreat, to deposit the logbook of a specified motor vehicle in Court and for a warrant of arrest against the 1st defendant to show cause why security should not be furnished.
 3. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. James Dry, the 1st plaintiff's Managing Director. Mr. Dry outlined that following the summary dismissal of the 1st defendant on 14th April 2011, the 1st defendant executed written confessions admitting to stealing investors' funds, placing deposits with unauthorized institutions, misusing funds belonging to the Catholic Church and other investors to purchase property, shares and make loans, and pledging to repay the stolen monies. That despite subsequent correspondence requesting disclosure of assets and a repayment plan, the 1st defendant failed to provide any documentation or proposals.
 4. Mr. Dry averred that investigations by the Capital Markets Authority led to the arrest and charging of the 1st defendant in multiple criminal cases for stealing, forgery and fraudulent diversion of substantial sums belonging to various individuals and institutions, as particularized in the charge sheets.
 5. Mr. Dry deposed that the 1st defendant perpetrated extensive instances of fraud while employed by the 1st plaintiff, including acting outside his mandate, forging confirmations, misrepresenting the source and ownership of funds, colluding with third parties, diverting investor funds to his personal accounts and to companies he controlled, and orchestrating early redemptions without authority. Mr. Dry set out specific transactions involving Crown Berger, Imperial Bank, Southern Credit Banking Corporation and other institutions, demonstrating how funds belonging to the plaintiffs and other innocent investors were falsely attributed, improperly redeemed and unlawfully transferred to entities linked to the 1st defendant. He averred that several religious institutions and investors were wrongfully credited or paid funds to which they were not entitled, while the rightful investors were defrauded.
 6. He referred to a consolidated schedule showing that at least Kshs.36,400,000/= was fraudulently transferred by the 1st defendant from various institutions and investors, with the likelihood of additional claims from other investors. He contended that the 1st defendant used stolen funds to acquire and develop assets including the DaRaja Retreat Centre, bank and brokerage accounts, shares, parcels of land and a motor vehicle, particulars of which are set out in the plaintiffs' affidavit in support of the application herein. In view of the above, Mr. Dry asserted the plaintiffs' entitlement in law and equity to trace, freeze and recover the misappropriated funds and assets from the 1st to 7th defendants pending determination of this suit.



7. In opposition to the application herein, the 1st defendant filed a replying affidavit sworn on 13th December 2011 by Mr. Timothy Karungu Karanja, the 1st defendant herein. Mr. Karanja confirmed that he was employed by the 1st plaintiff from April 2003 to April 2011, rose through senior positions, received commendations for exemplary performance, and never received any complaint or disciplinary warning relating to misconduct or loss of investor funds during his tenure. He contended that his employment was irregularly and wrongfully terminated, that he was forcibly removed from office without access to his personal effects, and that the 1st plaintiff thereafter exerted pressure on him to admit to alleged fraud and to disclose assets and to give repayment plans. Mr. Karanja denied authoring or signing any letters of confession attributed to him and asserted that any alleged admissions were obtained through intimidation and coercion without the benefit of legal representation, or are outright forgeries.
8. He maintained that he never admitted to stealing investor funds, misusing monies belonging to the Catholic Church or other entities, or purchasing assets using such funds. He contended that the 1st plaintiff unlawfully accessed and relied on data from his computer after his dismissal, forming the basis of the allegations against him, and selectively withheld correspondence that contradicts the plaintiffs' claims. He averred that any losses suffered by investors are solely the responsibility of the 1st plaintiff, which exercised full control over regulatory approvals, transaction documentation, internal controls, information technology systems and verification processes. Mr. Karanja detailed the elaborate compliance and audit structures in place and averred that it is improbable that large-scale fraud could have occurred without detection by the 1st plaintiff or the investors themselves.
9. Mr. Karanja specifically denied liability in respect of the transactions cited by the plaintiffs, including those involving Mr. David Gray, Horse Association, Fusion Capital, Old Mutual and Mr. Daudi Nturibi, and stated that there is no evidence linking him to any theft or diversion of funds. He further stated that some investments remained intact or were handled by third parties without his involvement. In relation to DaRaja Retreat Centre, Mr. Karanja deposed that the property was inherited from his late father in 2004, that it was neither purchased nor developed using investor funds. He accused the 1st plaintiff of misleading the other plaintiffs into instituting this suit in order to shift its own liabilities and negligence onto him. While acknowledging the existence of pending criminal cases, Mr. Karanja maintained that these do not imply guilt and are being improperly used to prejudice the Court.
10. In a rejoinder, the plaintiffs filed a further affidavit sworn on 23rd April 2025 by Mr. George Kenya, the 1st plaintiff's Finance Manager. Mr. Kenya averred that the 1st defendant's employment was lawfully terminated for gross misconduct, noting that the 1st defendant never challenged the termination in the Employment Court, which he contended underscores his culpability. He denied the 1st defendant's attempts to disassociate himself from the fraud and produced a further list and bundle of documents detailing multiple instances of theft of investor funds, including substantial sums belonging to the 2nd & 3rd plaintiffs, religious institutions and other investors.
11. He stated that access to the data found on the 1st defendant's computer after his termination was lawful, as the data belonged to the 1st plaintiff and was necessary to establish the extent of the fraud committed against investors. Mr. Kenya asserted that the fraudulent acts attributed to the 1st defendant were conclusively established in two criminal cases in which he was convicted of several counts of stealing and attempted stealing of Millions of shillings from various entities. Mr. Kenya deposed that the threshold for granting injunctive reliefs in civil proceedings has been met, particularly given the lower standard of proof in civil cases.



12. The application herein was canvassed by way of written submissions. The plaintiffs' submissions were filed on 24th April 2025 by the law firm of Oraro & Company Advocates, whereas the 1st defendant's submissions were filed on 27th June 2025 by the law firm of Gichigo Kamangu & Associates Advocates.
13. Ms Mwangi, learned Counsel for the plaintiffs cited the case of *Giella v Cassman Brown & Company Ltd* [1971] EA 358 and submitted that the principles governing the grant of interlocutory injunctions require the applicant to demonstrate a prima facie case with a probability of success, show that irreparable harm would result without the grant of an order of injunction, and establish that the balance of convenience favours granting the orders sought. Counsel referred to the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR125 and asserted that the plaintiffs have established a prima facie case to warrant being granted the orders sought, as the 1st defendant's fraudulent conduct constitutes a clear violation of the plaintiffs' rights, corroborated by criminal convictions.
14. She relied on the case of *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] KEHC 7263 (KLR) and maintained that the alleged harm is not merely financial but also reputational, as the 1st defendant's actions exposed the plaintiffs to regulatory investigations and potential loss of investor confidence. Counsel argued that failure to grant an order of injunction would risk the recovery of the sum claimed in this suit, whereas the 1st defendant would suffer no comparable prejudice.
15. She asserted that the balance of convenience tilts in favour of the plaintiffs. Regarding the Mareva injunction sought, Ms Mwangi relied on the test established in the case of *Zakhem International Construction Limited & another v Oilfields Engineering and Supplies Limited & another; Kenya Pipeline Company Ltd (Intended Interested Party)* [2023] KEHC 21842 (KLR) and submitted that the plaintiffs have satisfied all these conditions to warrant the Court to issue the freezing orders sought herein.
16. Mr. Gichigo, learned Counsel for the 1st defendant submitted that the plaintiff's application seeking an order of temporary injunction is improperly grounded on the provisions of Order 40 Rule 1(a) of the Civil Procedure Rules, 2010, as there is no property in dispute between the parties. He contended that the application ought to have been brought under the provisions of Order 40 Rule 1(b), which prevents a defendant from dealing with property in a manner that may obstruct or delay execution of a decree. Counsel argued that the application, being of a freezing nature, falls within the scope of a Mareva injunction, which has distinct conditions from ordinary injunctions.
17. Mr. Gichigo submitted that these conditions as outlined in authorities including *Beta Healthcare International Limited v Grace Mumbi Githaiga & 2 others* [2016] KEHC 7881 (KLR), require an applicant to demonstrate a good arguable case, court jurisdiction, existence of assets within the jurisdiction, a real risk of dissipation, and a balance of convenience in favour of granting the injunction. He further submitted that while the plaintiffs may have an arguable case, merely listing the 1st defendant's properties does not satisfy the additional requirements for a Mareva injunction. He contended that the plaintiffs must provide clear evidence that the 1st defendant attempted or intended to dispose of assets to obstruct or delay any potential decree, which they have not done.
18. Counsel cited the case of *Isa v Omar & 2 others* [2023] KEHC 17601 (KLR) and asserted that the power to grant a Mareva injunction is exercised cautiously and only upon proof of imminent risk of asset dissipation. He argued that in the absence of such evidence, the plaintiffs' application seeking a Mareva injunction fails to meet the high threshold required for such an injunction. He urged this Court to dismiss the said prayer with costs to the 1st defendant.



Analysis and Determination.

I have considered the instant application, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavit by the 1st defendant and the written submissions by Counsel for the parties. The issues that arise for determination are –

- i. Whether the plaintiffs are entitled to being granted a temporary injunction;
- ii. Whether the plaintiffs are entitled to the Mareva (freezing) injunction sought; and
- iii. Whether the 1st defendant's actions and alleged conduct warrant the restraining and disclosure orders.

Whether the plaintiffs are entitled to being granted a temporary injunction.

19. Temporary injunctions are provided for under Order 40 Rule 1 of the Civil Procedure Rules, 2010, which states that -

Where in any suit it is proved by affidavit or otherwise-

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

20. In an application for an interlocutory injunction, the onus is on the applicant to satisfy the Court that it should grant such an order. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) in dealing an application similar to the instant one held as follows-

In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- a. establish his case only at a prima facie level,
- b. demonstrate 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 favour.

21. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR), considered what constitutes a prima facie case and stated that -

“So what is a prima facie case” I would say that in civil cases it 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 as 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.

22. Upon perusal of the affidavits filed in support of the application herein, I note that the plaintiffs have placed before me detailed evidence alleging large-scale misappropriation of investor funds by the 1st defendant during his tenure as an employee of the 1st plaintiff. The allegations are supported by documentary evidence, including schedules of transactions. Significant reference is made to criminal proceedings in which the 1st defendant was found guilty and convicted of offences relating to theft and attempted theft of substantial sums. While the 1st defendant has vehemently contested the allegations, denied authorship of the alleged confessions, and challenged the propriety of his dismissal, this Court is not called upon at this interlocutory stage to make definitive findings on liability.
23. However, on the material placed before me, I am satisfied that the plaintiffs have demonstrated a prima facie case against the defendants with a probability of success sufficient to warrant being granted an order of temporary injunction.
24. On irreparable harm, the plaintiffs contend that the loss they face is not purely monetary but includes reputational damage, loss of investor confidence, and regulatory exposure, particularly, arising from investigations by the Capital Markets Authority. Courts have consistently held that where the injury complained of cannot be adequately remedied by an award of damages alone, the requirement of irreparable harm is satisfied. In the circumstances of this case, I am persuaded that the potential dissipation of assets allegedly acquired using misappropriated funds would occasion harm that may not be adequately compensated by damages.
25. As regards the balance of convenience, taking into account the competing interests, this Court finds that the balance of convenience tilts in favour of the plaintiffs.
26. In the circumstances, this Court finds that the plaintiffs have satisfied the threshold for being granted a temporary injunction.

Whether the plaintiffs are entitled to the Mareva (freezing) injunction sought.

27. The plaintiffs seek wide-ranging freezing orders restraining the defendants from dealing with various assets, bank accounts, shares, and properties. Such orders are in the nature of a Mareva injunction. It is now well settled that the principles governing the grant of a Mareva injunction are distinct from those applicable to ordinary interlocutory injunctions. Mareva injunctions are provided for under Order 39 Rule 5 of the Civil Procedure Rules, 2010, which states that –
 1. Where at any stage of a suit the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him -
 - a. is about to dispose of the whole or any part of his property;
 - b. is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.
 2. The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.



3. The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.
28. In *Kanduyi Holdings Limited v Balm Kenya Foundation & another* [2013] KEHC 3044 (KLR), the Court held that –

Accordingly, Order 39 Rules 5 and 6 of the CPR should operate within known dimensions of law drawing from the above case [*Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd dis Rep 509] and other judicial precedents on the subject. Order 39 rule 5 and 6 of the CPR is not to be used to:

- 1) pressure a defendant; or
 - 2) as a type of asset stripping (forfeiture); or
 - 3) as a conferment of some proprietary rights on the plaintiff upon the assets of the Defendant. The purposes of any order that should be issued under Order 39 Rules 5 and 6 of the CPR is to prevent the Defendants or would be judgment-debtor from dissipating his assets as to have the effect of obstructing or delaying the execution of any decree that may be passed against him” (Emphasis added).
29. In *Beta Healthcare International Limited v Grace Mumbi Githaiga & 2 others* [2016] KEHC 7881 (KLR), the Court laid down the principles governing the granting of a freezing injunction as hereunder –
- a. The claimant has ‘a good arguable case’ based on a pre-existing cause of action;
 - b. The claim is one over which the court has jurisdiction;
 - c. The defendant appears to have assets within the jurisdiction;
 - d. There is a real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted; and
 - e. There is a balance of convenience in favour of granting the injunction;

The Court can also order disclosure of documents or the administration of requests for further information to assist the claimant in ascertaining the location of the defendant’s assets. (Emphasis added).

30. This Court is satisfied, for reasons already stated, that the plaintiffs have established an arguable case. It is not disputed that this Court has the requisite jurisdiction to hear and determine the dispute between the parties herein. It is also not in dispute that the 1st defendant has assets within the local limits of this Court’s jurisdiction. The determining factor however, as to whether or not to grant a Mareva injunction against the defendants, is whether the plaintiffs have demonstrated a real risk of dissipation or removal of assets from the local limits of this Court’s jurisdiction, with the intent to obstruct or delay the execution of any decree that may ultimately be passed.
31. The power to grant attachment or freezing orders before judgment must be exercised sparingly and only upon clear proof of the mischief aimed to be curbed by the law. In this case, while the plaintiffs have listed numerous assets allegedly owned or controlled by the 1st defendant and other defendants, the evidence placed before the Court falls short of demonstrating an imminent or real risk that the said assets are about to be dissipated, alienated, or removed from the local limits of this Court’s jurisdiction,



with the intention of defeating the execution of a potential decree. Mere suspicion, or the existence of substantial assets, without cogent evidence of threatened dissipation, and a criminal conviction is insufficient to justify an applicant being granted Mareva injunction.

32. In light of the above, this Court finds that the plaintiffs have not met the high threshold required for being granted of an order of Mareva injunction.

Whether the 1st defendant's actions and alleged conduct warrant the restraining and disclosure orders.

33. The plaintiffs have also sought extensive restraining and disclosure orders compelling the 1st defendant and third parties to furnish detailed financial statements, asset inventories, and transactional records. Such orders are intrusive in nature and must be justified by clear necessity and proportionality. This Court notes that while the allegations against the 1st defendant are serious and supported by substantial material, the Court is mindful that the suit is yet to be heard and determined on its merits. At this interlocutory stage and in the absence of proof of imminent dissipation of assets, I am not persuaded that the sweeping disclosure and coercive orders sought, including the furnishing of security and issuance of a warrant of arrest, are warranted.
34. The Court is of the view that the interests of justice are sufficiently safeguarded by being granted temporary injunction preserving the status quo, without extending to the far-reaching Mareva and disclosure orders sought. The limited restraint herein is issued strictly for preservation of the identified subject matter of the suit and does not amount to a freezing or Mareva injunction.
35. In the end, this Court finds that the instant application is partly merited. Consequently, it is allowed in the following terms –
- i. I hereby grant a temporary injunction restraining the defendants from selling, transferring, or otherwise dealing with their shares in listed companies at the Nairobi Securities Exchange;
 - ii. An order of temporary injunction is hereby granted restraining the 1st defendant, his agents, co-shareholders, Directors, Advocates from disposing of, advertising, charging, assigning, selling or otherwise interfering in any way with his interest in the properties being Ruiru/Ruiru East Block 2/229, Naivasha/Maraigusho/Block 10/13 (Kedong), Dagoretti/Kangemi/1554, apartment 3B on L.R No. 22767/8 at Loresho Springs and motor vehicle Registration No. KBN 633S – Toyota Camry;
 - iii. An order of temporary injunction is hereby granted restraining the defendants, whether by themselves, their servants, agents or Advocates, from removing from the jurisdiction of this Court any assets specifically identified in these proceedings as having been acquired from or traceable to the alleged misappropriated funds, pending the hearing and determination of this suit; and
 - iv. Costs shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF FEBRUARY 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-



Ms Claire Mwangi for the plaintiffs/applicants

Mr. Gichigo for the 1st defendant/respondent

Mr. Kimutai – Court Assistant.

