

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELCLC NO. E416 OF 2025

**LAWANGIRO CARMEL FARMS LIMITED.....
APPLICANT**

=VERSUS=

**LANDS LIMITED.....1ST
RESPONDENT
AGRICULTURE DEVELOPMENT CORPORATION.....2ND
RESPONDENT**

RULING

1. Before me for determination is the amended Chamber Summons dated 30th October 2025 brought under Section 7 of the Arbitration Act and Rule 2 of the Arbitration Rules 1997, in which the Applicant seeks the following orders:

- i. Spent.***
- ii. Spent.***
- iii. THAT pending the hearing and determination of the intended arbitral proceedings between the Applicant and the Respondents, this Honourable Court be pleased to grant an order of interim injunction restraining the Respondents their servants, agents or any person acting on their behalf from interfering with, evicting, cancelling, revoking or in any***

way whatsoever disrupting the Applicant's quiet possession, occupation and enjoyment of all that property comprised in Land Reference Number 10069 known as Mutara Ranch measuring approximately 11,000 acres.

iv. The Honourable Court be pleased to grant such further or other interim measures of protection as it may deem just and expedient in the circumstances in aid of the intended arbitration.

v. The costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Musa Said, sworn on even date.

THE APPLICANT'S CASE

3. The Deponent averred that the Applicant is the lessee under a lease agreement dated 1st August 2010 for the demised property for a term of 15 years, renewable upon expiry, and that the term was set to expire on 31st July 2024.

4. He further averred that the Applicant requested a lease renewal, and in a letter dated 29th November 2022, the 2nd Respondent approved a 15-year extension and on 1st January 2023 signed a new lease agreement, containing an arbitration clause in clause 14. He stated that the Applicant paid Kshs 2,296,250 on 31st July 2025, covering rent from August 2025 to August 2026.

5. He maintained that at all material times the 1st Respondent was the lessor of the demised property. He further maintained that the 1st Respondent is a subsidiary of the 2nd Respondent, and that the 2nd Respondent's principal officers executed the lease.
6. He further averred that the 2nd Respondent has been receiving rent payments from the Applicant for the years 2023, 2024, and 2025 under the 2023 lease agreement.
7. He stated that although the Applicant made a payment on 31st July 2025, the 2nd Respondent has refused to issue an official receipt and has, through its corporate secretary, stated that its board has rescinded the new lease.
8. He asserted that the Applicant has made substantial developments to the demised property and currently engages in large-scale farming, both of which are at risk of irreparable loss if the Respondents evict the Applicant or interfere with its possession.
9. He maintained that a dispute has arisen within the meaning of clause 14, thereby requiring arbitration
10. He urged the court to grant interim protective measures to preserve the subject matter pending the arbitral proceedings.
11. He argued that unless the court intervenes, the Applicant would be evicted from the leased property.

THE 1ST RESPONDENT'S CASE

12. The 1st Respondent filed a replying affidavit sworn by its administrator, Nicholas Ayugi, on 24th November 2025.
13. The deponent averred that the 1st Respondent is the registered owner of the demised property. He further averred that the 1st Respondent authorized only the issuance of the lease dated 1st August 2010, which was executed by the 2nd Respondent solely as the 1st Respondent's agent. He asserted that the 1st Respondent neither participated in nor authorized the execution of the lease dated 1st January 2023, which was neither presented for approval nor signed by its officers nor affixed with the company seal.
14. He maintained that, under land or contract law, two leases cannot legally coexist on the same parcel of land.
15. He maintained that the Applicant's attempt to rely on the 2023 lease to establish rights in the suit property is misconceived, untenable, and incapable of conferring any enforceable interest. He argued that the Applicant cannot rely on an arbitration clause in a document that is void ab initio.
16. He maintained that the injunction would prejudice the 1st Respondent, as it supports national food security through the 2nd Respondent and ADC. He asserted that the demised property is part of an agricultural and livestock program critical to food production. He argued that the Applicant's continued occupation interferes with the planned land use

program and undermines the Respondent's responsibility to discharge its public mandate.

17. He further argued that the Applicant has no legal right to remain in the demised property and urged the court to dismiss the application with costs.

THE 2ND RESPONDENT'S CASE

18. The 2nd Respondent filed a replying affidavit sworn by Lornah Kolum, its legal officer, in opposition to the application.

19. The deponent admitted that the Applicant was granted a lease of the suit property by the lease dated 1st August 2010, which the 2nd Respondent recognizes as the valid lease between the parties.

20. She asserted that the lease dated 1st January, 2023, is null and void because it was not executed with the 1st Respondent's common seal, contrary to the mandatory requirements governing the execution of leases by the 1st Respondent. She further asserted that a new lease cannot be created over the same parcel of land while an existing lease subsists. She further averred that the 2nd Respondent was acting as an agent of the 1st Respondent, the registered owner of the demised property, which has retaken possession and control of all matters related to the demised property. Based on the foregoing, she argued that the 2nd Respondent lacked authority to issue a lease over the demised property.

21. She argued that the 1st Respondent has no legal obligation to issue a receipt for a payment arising from an invalid transaction.
22. She further argued that the Applicant cannot rely on clause 14 of the alleged 2023 lease because the document is void ab initio. She emphasized that the arbitration clause in the 2010 lease lapsed upon its termination. She asserted that the amended application is fatally defective and an abuse of the court process, as no valid arbitration agreement currently binds the parties.
23. She maintained that the 2nd Respondent is a state corporation whose core mandate is to promote agriculture and ensure national food security through large-scale production and breeding programs nationwide. She explained that, through the 1st Respondent, the 2nd Respondent relies on the farm to advance its statutory mandate of promoting national food security, and that any restraint would directly undermine its statutory duty and ongoing national food security initiatives.
24. Based on the foregoing, she urged the court to dismiss the application with costs.
25. The application was canvassed by way of written submissions

THE APPLICANT'S SUBMISSIONS

26. The Applicant filed its submissions dated 26th January 2026. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:

a) Whether the 2023 lease agreement contains an arbitration clause as a prerequisite to support the Applicant's prayer for interim measures of protection pending the intended arbitration.

b) Whether the 2023 lease is a nullity;

c) Whether this court has jurisdiction to grant an interim measure of protection pending the intended arbitration.

d) Whether the nature of this matter has satisfied the tests for granting interim measures of protection pending the intended arbitration.

27. Regarding the first issue, Counsel submitted that the 2023 lease contains an arbitration clause in clause 14. It was further submitted that a dispute had arisen concerning the contested validity of the 2023 lease and the 2nd Respondent's refusal to perform its obligations under the lease.

28. Regarding the second issue, Counsel submitted that the amended replying affidavits sworn by Lenah Kokum on 26th November 2025 and by Nicholas Ayugi on 24th November 2025 address the validity of the 2023 lease agreement. Counsel argued that the amended replying affidavit is incompetent because the law does not permit the

amendment of affidavits. To support this argument, Counsel relied on the case of **Kisangi & another (Civil Suit E080 of 2021) (2025) KEMC 38 (KLR)**.

29. Counsel argued that the Respondent failed to produce an agency agreement, a board resolution, or any other evidence establishing an agency relationship with Agricultural Development Corporation Limited. To support this point, reliance was placed on the case of **Moi v Murithi & another (Civil Appeal 240 of 2011) (2014) KECA 642 (KLR)**

30. It was submitted that the competence of the arbitration clause is not for this court to determine. It was further submitted that, unlike the 2010 lease, the lease was directly entered into by the 1st Respondent. It was further submitted that the lease was drafted by the Respondents; hence, any alleged ambiguity should be interpreted against their interests as the drafters.

31. Counsel argued that the leases have no conflict whatsoever and that the Respondents designed them to flow into one another.

32. Regarding the third issue, Counsel submitted that Section 7 permits the High Court to grant interim measures before or during arbitration. To support this point, reliance was placed on the cases of **CMC Holdings Limited & another v Jaguar Land Rover Exports Limited (2013) KEHC 6067** and **Safaricom Limited v Ocean View**

Beach Hotel Limited & 2 others (2010) KECA 346 (KLR).

33. Based on the foregoing, Counsel submitted that the court has jurisdiction to hear and determine the application and to grant the interim measure of protection pending the hearing and determination of the intended arbitration.
34. With regard to the third issue, Counsel relied on the conditions set forth in **Safaricom Limited v Ocean View Hotel** to show that the Applicant met the required criteria. Counsel submitted that the contested 2023 lease contains an arbitration clause in clause 14 and that the Applicant faces a real danger of eviction from the property or of the property being leased to a third party, as the 2nd Respondent has refused to acknowledge the 2023 lease, which would render the proceedings nugatory.
35. In conclusion, Counsel submitted that the Applicant has met the threshold for the grant of the orders sought.

THE RESPONDENTS SUBMISSIONS

36. The Respondent filed its submissions dated 28th October 2025. On behalf of the Respondents, Counsel outlined the following issues for the court's determination: -
- a) *Whether the purported lease agreement dated 1st January 2023 is valid and enforceable in law:*
 - b) *Whether there exists a valid and binding arbitration agreement between the parties*

capable of being invoked under Section 7 of the Arbitration Act; and

c) Whether the Applicant is entitled to the interim measures of protection sought in the absence of a valid lease or arbitration agreement.

37. Counsel submitted that the lease dated 1st January, 2023, is a nullity ab initio as it was executed when the 2010 lease was still operative. It was further submitted that the 2023 lease does not meet the statutory requirements under Section 38 of the Land Act and Section 3(3) of the Law of Contract Act. To support this claim, Counsel relied on the contents of the replying affidavit and on the case of **Mega Garment Limited v Mistyr Jdva Parbat & Co (EPZ) Limited (2016) eKLR.**

38. Regarding the second issue, Counsel submitted that no valid agreement exists between the parties to enable the court to grant an interim measure of protection under Section 7 of the Arbitration Act. Counsel further submitted that the 2023 lease, being void for lack of proper execution and corporate authority, cannot form the basis of a valid arbitration agreement. Counsel maintained that the Applicant's reliance on clause 14 of the purported 2023 lease to invoke arbitration is misconceived, untenable, and bad in law, as it cannot be invoked independently of the principal contract. **To support this argument, reliance was placed on the cases of Kisumuwalla Oil Industries**

Ltd v Pan Asiatic Commodities Pte Ltd (1997) eKLR and UAP Provincial Insurance Co. Ltd v Micheal Beckett (2013) eKLR.

39. In conclusion, Counsel urged the court to find that the Applicant had not satisfied the threshold for the grant of interim measures under Section 7 of the Arbitration Act and to dismiss the application with costs

ANALYSIS AND DETERMINATION

40. Having considered the application, the respective affidavits, and the rival submissions, the issue that arises for determination is whether the Applicant has satisfied the threshold for the grant of an interim measure of protection pending the hearing and determination of the intended arbitral proceedings.

41. The **Black's Law Dictionary 8th Edition** defines interim measure of protection as follows:

“An international tribunal order to prevent a litigant from prejudicing the final outcome of a lawsuit by arbitrating action before judgment has been reached. This measure is comparable to a temporary injunction in national law.”

Section 7 of the Arbitration Act provides as follows:

‘(1) It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral

proceedings, an interim measure of protection and for the High Court to grant that measure.

(2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.

42. In **Safaricom Limited vs Ocean View Beach & 2 others 2010 eKLR**, the court set out the conditions that must be met before an interim measure of protection is granted as follows:

1. The existence of an arbitration agreement.

2. Whether the subject matter of arbitration is under threat.

3. In the special circumstances, the appropriate measure of protection is determined after an assessment of the merits of the application.

4. For what period must the measure be given, especially if requested before the

commencement of the arbitration, so as to avoid encroaching on the tribunal's decision

43. The grant of an interim measure of protection is discretionary. The purpose of an order of protection is to preserve assets or to maintain the status quo pending the outcome of the arbitral proceedings.
44. It is not in dispute that the parties had a lease agreement for the property in suit. The Respondents contest the validity and enforceability of the alleged lease extension, which they contend is void ab initio for lack of authority and the common seal of the 1st Respondent. The Respondents maintain that the lease extension is invalid and incapable of establishing any rights, including reliance on the arbitration clause.
45. The Applicant maintains that the validity of the lease extension goes to the substance of the dispute and ought to be determined through arbitration.
46. The Respondents' argument that the lease extension raises contested questions of fact and law, including the scope of the 2nd Respondent's authority and the legal effect of the payments, cannot be determined at the interlocutory stage. At the interlocutory stage, the court is required to determine whether a prima facie case has been made. In **UAP Provincial Insurance Co. Ltd v. Michael John Beckett (2014) eklr**, the court held that:

“At the interim stage, the court only needs to be satisfied that there is a dispute capable of being referred to arbitration and that the arbitration agreement is not plainly invalid.”

47. The assertion that the lease extension is invalid is not sufficient to defeat an application for interim protection. The issues of enforceability of the lease and scope of the agent’s authority are contested factual and legal issues that can best be determined by the arbitral tribunal.
48. At this stage, the court is not called upon to make a conclusive determination on the validity of the lease, the authority of the 2nd Respondent, or the legal consequences of the absence of the company seal. These are substantive issues that go to the root of the dispute and fall within the province of the arbitral tribunal. At this stage, the court is required to satisfy itself that there exists a dispute capable of being referred to arbitration and that interim protection is necessary to preserve the subject matter pending that determination.
49. The Applicant has demonstrated that it is in occupation of the suit property and continues to fulfil its obligations under the new lease by paying rent. If the Applicant were to be evicted or otherwise disrupted before the arbitral tribunal determines the dispute, the arbitration's substratum would be irreversibly altered. The 1st Respondent’s refusal to issue

receipts acknowledging payment creates uncertainty and exposes the Applicant to the risk of interference with its quiet possession.

50. In the circumstances and without making any definitive finding on the validity and enforceability of the lease extension, which issue is reserved for determination by the arbitration tribunal, the court is satisfied that the Applicant has established a prima facie case and has met the threshold for the grant of an interim measure of protection under Section 7 of the Arbitration Act.

51. Based on the evidence presented by the parties, this court finds and holds that the balance of convenience favours maintaining the status quo pending the hearing and determination of the intended arbitral proceedings.

52. The upshot of the foregoing is that the application dated 30th October 2025 is merited and the same is hereby allowed in the following terms:-

- i. THAT pending the hearing and determination of the intended arbitral proceedings between the Applicant and the Respondents, an order of injunction be and is hereby issued restraining the Respondents their servants, agents or any person acting on their behalf from interfering with, evicting, cancelling, revoking or in any way whatsoever disrupting the Applicant's quiet possession, occupation and enjoyment of***

all that property comprised in Land Reference Number 10069 known as Mutara Ranch measuring approximately 11,000 acres.

ii. The Applicant is awarded the costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2026.

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF: -

Ligunya for the Applicant.

Ahmed - Court Assistant