

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. E018 OF 2026**

ASBURY MARUZA

CHIKWANHA.....PLAINTIFF/APPLICANT

VERUS

THE REGISTRAR OF COMPANIES.....1<sup>ST</sup>

DEFENDANT/RESPONDENT

BUSINESS REGISTRATION SERVICES (BRS).....2<sup>ND</sup>

DEF/RESPONDENT

THE ATTORNEY GENERAL.....3<sup>RD</sup>

DEFENDANT/RESPONDENT

ALP MANAGEMENT KENYA LIMITED....4<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP NORTH LIMITED.....5<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP NORTH TWO LIMITED.....6<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP NORTH THREE LIMITED.....7<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP WEST LIMITED.....8<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP WEST TWO KENYA LIMITED.....9<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP WEST THREE KENYA LIMITED.....10<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP BTS ONE SEZ LIMITED.....11<sup>TH</sup>

DEFENDANT/RESPONDENT

ALP WEST MANAGEMENT CO. LTD.....12<sup>TH</sup>

DEFENDANT/RESPONDENT

**RULING**

1. The Plaintiff/Applicant herein has filed a Notice of Motion dated 20<sup>th</sup> January 2026 (the Application), together with a  
Plaint of similar date, against the Defendants/Respondents.

In the Application, the Applicant is seeking the following:

**(a) Spent.**

**(b) Interim injunction restraining the Respondents, either by themselves or anyone acting under their instructions, from effecting, procuring and/or proceeding with any further filings, changes, transfers, disposals or other corporate actions affecting the companies' directorship, shareholding or assets pending the hearing and determination of this application.**

**(c) Interim injunction restraining the Respondents, whether by themselves or anyone acting under their instructions, from effecting, procuring and/or proceeding with any further filings, changes, transfers, disposals or other corporate actions affecting the companies' directorship, shareholding or assets pending the hearing and determination of the suit.**

**(d) Costs of the application.**

2. This application was placed before me under certificate of urgency on 28/1/2026. I did not certify the matter as urgent

but directed that it be served on the Respondents to attend court for directions to be issued on 11/2/2026. On this date, Mr. Mabachi, appearing for the Applicant, sought orders for maintenance of *status quo* in order to preserve the substratum of the matter pending the hearing and determination of the application. The court directed the parties to address the court on granting of the interim injunction pending the *inter partes* hearing and pending directions on the pending order seeking interim injunctive orders pending hearing and determination of the main suit.

3. On 19/2/2026, Mr. Mabachi submitted that the Application was informed by the unprocedural removal of the Applicant from his position as a director of the 4<sup>th</sup> to 12<sup>th</sup> Defendants/Respondents; that the orders of *status quo* sought are meant to freeze the situation position as it is, pending the hearing and determination of the instant application; that the 4<sup>th</sup> -12<sup>th</sup> Defendants are in the process of restructuring their assets into a Real Estate Investment Trust which was said to be closing on 27/2/2026 and that

this will entail the transfer of assets and changes in directorship rendering the suit moot.

4. The Applicant has also told the court that he is a shareholder of the parent company of the 4<sup>th</sup> -12<sup>th</sup> Respondents; that the orders he is seeking are necessary to preserve the subject matter of the suit.
5. He also submitted on other issues which touch on the substantive order of injunction sought pending hearing and determination of the suit.
6. Ms Wataka for the 4<sup>th</sup> -12<sup>th</sup> Respondents opposed the interim orders sought. She, too, submitted on issues touching on the substantive order of injunction sought pending the hearing of the main suit.
7. Regarding the issue of granting an order of *status quo* pending *inter partes* hearing, Ms Wataka submitted that the Applicant is not seeking the order of *status quo* in good faith and that if granted, the order will hinder business of the 4<sup>th</sup> -12<sup>th</sup> Defendants in any way.
8. Counsel submitted that the Applicant has not met the threshold for grant of interlocutory injunction to warrant a

grant of the orders sought. She submitted that the removal of the Applicant was procedural; that there is no demonstration of irreparable harm, and should it exist, it can be compensated adequately by an award of damages. She submitted that the balance of convenience tilts in favour of the Respondents because an order for status quo will paralyze the 4<sup>th</sup> -12<sup>th</sup> Respondents and be prejudicial to them.

### **Determination**

9. I have noted that despite directing the parties to submit only on the issue of the order of interim injunction pending the hearing and determination of the instant application *inter partes*, they proceeded to argue on all the issues arising from the instant application.

10. I wish to state that this court has not issued directions on how to handle the Notice of Motion dated 20/1/2026. I only directed parties to address the court on why the order for *status quo* order should or should not be granted at this

stage. I will therefore limit myself in this determination to that singular issue.

11. As I have shown hereinabove, the Applicant seeks an interim injunction to restrain the Respondents, either by themselves or anyone acting under their instructions, from effecting, procuring and/or proceeding with any further filings, changes, transfers, disposals or other corporate actions affecting the companies' directorship, shareholding or assets pending the hearing and determination of this application. This is the issue I directed the parties to address me on.

12. The general principles governing injunctions are set out in **Giella v Cassman Brown & Co Ltd [1973] EA 358** (see also **Micah Cheserem v Immediate Media Services & 4 others [2000] eKLR**). An applicant seeking an injunction must demonstrate:

***a) A prima facie case with a probability of success.***

***b) That he or she stands to suffer irreparable loss that cannot be adequately compensated by way of damages, and***

***c) That the balance of convenience should tilt in favour of the applicant.***

13. The Court of Appeal, in discussing the triple requirements of *prima facie* case, irreparable injury and balance of convenience an applicant is required to satisfy to secure a grant of an injunction, whether temporary or permanent, stated in **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR** that:

***“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. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory***

*order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."*

1. The definition of what constitutes a *prima facie* case was given in **Mrao Ltd v First American Bank of Kenya and 2 others [2003] eKLR**, where the Court of Appeal defined it thus:

*"A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." It is 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 from the latter."*

14. The above definition was adopted by the Court of Appeal in **Nguruman case** when that Court stated as follows:

*“We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has*

*been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."*

15. The Applicant must satisfy the above requirements before he can secure the orders he is seeking. He has stated that he has established a prima facie case and demonstrated that he will suffer irreparable damage that cannot be adequately compensated by an award in damages. On the other hand, the Respondents have argued that the Applicant was removed from his position of

directorship procedurally and that it is the Respondents who stand to suffer irreparable damage because they will not be able to conduct their affairs should this court grant an order for status quo.

16. I have noted that the Applicant has admitted that he is no longer a director after he was removed, although he claims that the removal was unprocedural. This court was also told that there are pending disputes in other courts relating to this matter. While it can be argued that the Applicant has established prima facie case as defined above, the tripartite requirements defined under the above authorities must be demonstrated sequentially. He must demonstrate irreparable harm.

17. I have noted that the applicant did not dwell so much on the irreparable harm he is likely to suffer. He however submitted that if the Respondent are allowed to proceed with their actions, it will affect the assets of the Respondents and change directorship. Given that the applicant is not longer a director, it is not clear how the actions of the Respondents are likely to harm him.

18. My careful analysis of this matter, and care being taken not to make pronouncements that may prejudice the matter before the parties argue the issues fully, leads me to the conclusion that the Applicant has not presented sufficient evidence to persuade this court that he deserves the orders he is seeking at this stage of these proceedings.

19. It is my finding, and I so hold, that the orders sought at this stage by way of interim injunction pending the inter partes hearing of this application or an order for status quo to be maintained pending hearing and determination of the instant application cannot issue at this stage. It is my considered view, that the parties should be afforded an opportunity to be heard fully in order to equip this court with all the relevant evidence required to arrive at a sound decision.

20. Consequently, I hereby decline to grant an order for an interim injunction pending the hearing and determination of the application. It is so ordered.

**Dated, signed and delivered this 25<sup>th</sup> February 2026.**

**S. N. MUTUKU  
JUDGE**

**In the presence of:**

1. Mr. Mabachi for the Applicant
2. Ms Wataka for the Respondent

ORIGINAL