

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. E294 OF 2025

AMAYAS SUITS SUITES LTD.....PLAINTIFF/APPLICANT
VERSUS
EQUITY BANK (KENYA)
LTD.....DEFENDANT/RESPONDENT

RULING

1. For determination is **Amayas Suites Ltd** (*hereafter the Plaintiff/Applicant*) **motion dated 23/10/2025** filed against **Equity Bank (Kenya) Ltd** seeking *inter alia*:-

a) *Spent*

b) *Spent*

c) *That this honorable Court be pleased to grant temporary mandatory injunction ordering the Defendant and or its agents, officers or employees to open the Plaintiff's Equity Bank Account No. 08202836229973 Donholm Branch and Equity Account No. 0820283807034 pending hearing and determination of the suit.*

d) *The costs of this motion be provided for.*

2. The motion is brought pursuant to **Orders 40 Rule 1 & 2** of the **Civil Procedure Rules (CPR)** and on grounds on the face of the motion amplified in the supporting affidavit of even date and an undated supplementary affidavit deposed by Mambili Scotch Dennis, who cites being the sole director of the Plaintiff company and thus competent to depose.

3. **Equity Bank (Kenya) Ltd** (*hereafter the Defendant/Respondent*) opposes the motion by way of **grounds of opposition dated 11/11/2025** and a **replying affidavit** deposed by **Lucy Itumu dated 30/01/2026**, who on her part cites being the Defendant's Operations Manager duly authorized and competent to depose.
4. Directions were issued on disposal of the Plaintiff's motion by way of submissions. Both parties complied. Having considered the rival affidavit material and submissions the Court's postulation that the issues for **determination concern-**:
- a. *Whether the Plaintiff has met the threshold for grant of temporary and or mandatory injunctions?*
 - b. *Whether the reliefs sought for are tenable in the circumstance?*
 - c. *Who ought to bear the costs of the motion?*
5. The Court proposes to contemporaneously address issues (a) & (b) as coined above. In presenting the instant motion, the Plaintiff has relied on Order 40 Rule 1 & 2 of the CPR. As concerns, the principles governing the grant of an interlocutory injunction, the same have since long been settled in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**.
6. Meanwhile, the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)** restated the principles governing the grant of interlocutory injunctions as enunciated in **Giella's** case and observed that the role of the Judge dealing with an application for interlocutory injunction is merely to consider whether the application has been brought

within the said principles. In addition, the Court stated that the three (3) conditions apply separately as distinct and logical hurdles to be surmounted sequentially by an applicant.

7. That is to say, that the applicant who establishes a *prima facie* case must further establish irreparable injury, being injury, for which damages recoverable could not be an adequate remedy. And where the Court is in doubt as to the adequacy of damages in compensating such injury, the Court will consider the balance of convenience. Finally, where no *prima facie* case is established, the Court need not investigate the question of irreparable loss or balance of convenience.
8. Meanwhile, as concerns a temporary mandatory injunction, discussed by the Court of Appeal in **Kamau Mucuha v Ripples Ltd [1993] KECA 82 (KLR)** and reiterated in **Kenya Breweries Limited & another v Washington O. Okeyo [2002] KECA 284 (KLR)**, it was observed in part that -;

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then, only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple ... act which could be easily remedied, or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been

granted, that being a different and higher standard than required for a prohibitory injunction.”

9. Consequently, alongside the settled ingredients in **Giella** case, as highlighted above, in granting a temporary mandatory injunction the Court ought to be alive to; the special and exceptional circumstance; clear or compelling case; acts simple and easily remedied; attempt to steal a march; and the higher standard of assurance.
10. With the above in reserve, as to what constitutes a *prima facie* case with a probability of success, is one that a Court would conclude upon material presented before it, that there exists a right that has been violated or infringed by the opposite party that calls for explanation as held in the **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)** The aforestated decision has been reaffirmed and applied by superior Courts in innumerable subsequent decisions.
11. By his affidavit material, **Mambili Scotch Dennis** contends that the Plaintiff is the account holder of Equity Bank Account No. 08202836229973 Donholm Branch and Equity Account No. 0820283807034, to wit, on 23/03/2023 the Defendant unlawfully ordered closure of the accounts preventing him from accessing the same to run the Plaintiff's business. That as a result of the Defendant's actions the Plaintiff has undergone massive financial losses and its business has become inoperable, of which, has occasioned him and his family to

suffer immensely given that he is the sole director of the Plaintiff.

12. In response, the Defendant through the deponent, confirms that the Plaintiff voluntarily opened a business account for purpose of running a day to day business however goes on to state that the said account opening form contained terms and conditions governing the operations of the accounts with the Defendant. That sometime in December 2024, the Defendant evaluated the operations of the two (2) accounts in question and pursuant to its contractual right to close account in the terms and conditions, the Defendant issued the Plaintiff with notices of account closure, of which was effected.
13. The Defendant maintains that its actions were lawful per the executed terms and conditions, as such, the Plaintiff's motion is an invitation to the Court to re-write the terms and conditions therefore the Plaintiff's motion is an abuse of the Court process.
14. The Defendant concludes by stating that the Plaintiff has failed to cogently demonstrate alleged loss of exceptional circumstance to warrant the grant of a temporary mandatory injunction.
15. In rejoinder vide the supplementary affidavit, **Mambili Scotch Dennis** contends that it did not receive the notice of account closure whereas he has never been arraigned in any Court over illegality with respect to operations of the two (2) accounts. He concludes that the Defendant has not offered any tangible reason for closure of the account meanwhile failed to issue a

banker's cheque for funds held on account, as advised in its closure letter, necessitating the instant motion.

- 16.** Here, it is not in dispute that the Plaintiff operated two (2) accounts (A/C No. 08202836229973 and A/C No. 0820283807034) with the Defendant, to wit, the latter on 11/12/2024 ordered its closure. The Plaintiff's complaint against the Defendant, as I gather, is that the said closure was unlawful and without basis, notwithstanding the terms and condition with respect to operations of the accounts in question.
- 17.** The Defendant's position on the matter is rather resolute, that by dint of **Clause 20** of the agreed terms and conditions, the Bank was within its rights to close the accounts whereas the Plaintiff has not demonstrated any exceptional circumstance and to grant any interlocutory mandatory order would be to re-write the terms and conditions.
- 18.** I have taken the liberty of perusing the material attached to the respective affidavit material, it is not in contention that **Mambili Scotch Dennis** is the sole director of the Plaintiff and signatory of the accounts in question, going by "**Annexure ASL1**" appearing in the Plaintiff's affidavit and "**Annexure LT1(a)&(b)**" appearing in the Defendant's affidavit. It is further not in dispute that the respective accounts had terms and conditions that placed obligations on the respective parties. That said, Defendant vide its letter dated 11/12/2024 (**Annexure LT2**), did communicate its intent to close the Plaintiff accounts.

- 19.** At this juncture, I am hesitant to set out in *ad verbum*, **Clause 20** of the terms and conditions as juxtaposed against the letter dated 11/12/2024. Given that a detailed analysis may prejudice the hearing of the matter before the trial Court. Nevertheless, it would seem that the Defendant unilaterally closed the Plaintiff's accounts without issuing any cogent reasons for doing the same in its letter dated 11/12/2024.
- 20.** However, on the back drop of the above, the Plaintiff has equally not proffered any material demonstrating that, prior to closure, there were funds in the said account and or whether the said accounts were primarily in use by the Plaintiff for payments or receiving funds. Given that the accounts were business accounts there must have been paper trails on payments and or monies received on the said accounts on accord of the Plaintiff business activity. Onus was on the Plaintiff to evince such material.
- 21.** In **Mrao Ltd** (supra) the Court emphasized that it was not merely sufficient to raise issues but that it was required of the successful applicant to demonstrate infringement of a right sufficient to call for an explanation or rebuttal from the opposite party and that the standard of proof required is higher than an arguable case. Thus, in the absence of any of the earlier highlighted material, from the Plaintiff, it is difficult to gauge whether a *prima facie* case has been established alongside exceptional circumstance demonstrated.
- 22.** A party alleging financial loss or business inconvenience due to closure of accounts, must present material illustrative of the

breach. There is no sufficient material placed before the Court to establish *prima facie* and exceptional circumstance demonstrating the aforesated.

- 23.** The mere fact that the Defendant did not strictly abide by the parameters of **Clause 20** of the terms and conditions, prior to closure of the Plaintiff's accounts, may not necessarily warrant this Court's intervention by way of a temporary mandatory injunction at this juncture. As is, the Applicant's affidavit material, is deficient of any satisfactory evidence to warrant this Court's intervention at this interlocutory stage.
- 24.** The Court of Appeal in **Nguruman Ltd** (supra) held that where no *prima facie* case is established, the Court need not consider the questions of irreparable damage or balance of convenience whereas as observed in **Kenya Breweries Limited** (supra) a mandatory injunction cannot issue on an interlocutory application in the absence of special circumstances.
- 25.** Consequently, the Plaintiff's motion dated **23/10/2025** must fail and is hereby dismissed with costs, to abide by the outcome of the suit.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 5th day of March, 2026.

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JANET MULWA.
JUDGE