

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E389 OF 2025

FEM
LIMITED.....PLAINTIFF/APPLICANT

TECH

ENTERPRISES

VERSUS

MFI
LIMITED.....DEFENDANT/RESPONDENT

DOCUMENT

SOLUTIONS

RULING

1. Before this court for determination is the notice of motion dated 5th August, 2025 filed by the plaintiff/applicant and it is expressed to be brought under **Sections 1A, 1B and 3A** of the **Civil Procedure Act, Order 40 Rules 2, 3, 4 and 8, Order 51 Rules 1, 3, 4, 11 and 13** of the **Civil Procedure Rules** and **Articles 40,50(1), 159 (2)(a) and (e)** of the **Constitution** of Kenya seeking the following orders:-

1. *Spent.*
2. *Spent.*
3. *The honourable court be pleased to issue an order of temporary injunction restraining the defendant either by itself or its agents and subsidiaries or any other person from sale, transfer, gifting, any disposition, dealing, evicting the plaintiff and or its agents or staff and or in any manner whatsoever interfering with the plaintiff's occupation and use of the property known as land parcel 209/359/16 located in Kilimani (the suit property) pending the hearing and determination of this suit.*
4. *Any other order or relief that this honourable court may deem fit to grant.*

5. Costs of this application be awarded to the plaintiff.

2. The application is premised on the grounds *inter alia* that the plaintiff/applicant is currently in occupation and use of the property known as land parcel 209/359/16 in Kilimani pursuant to a valid lease agreement executed with the defendant on 15th July, 2024 following a renewal of the previous agreement entered into on 15th January, 2019.
3. The application is further supported by the affidavit of the Natasha Sultan Nanji, the plaintiff/applicant's director sworn on even date. The plaintiff/applicant deposed that despite there being a lease agreement dated 15th July, 2024 the defendant/respondent has been making violent attempts to forcibly evict it from the suit property despite the existence of the lease agreement.
4. The plaintiff/applicant deposed that it has been fully meeting its obligations as to the payment of rent and other charges and the imminent eviction would not only be unlawful but would result in irreparable harm including disruption of its ongoing commercial obligations. Further, its continued possession does not prejudice

the defendant, while the eviction or interference with its business operations and assets would cause grave prejudice.

5. The defendant/respondent did not file a response to the instant application. This court directed that the application be canvassed by way of written submissions. The plaintiff/applicant filed its written submissions dated 15th December, 2025. I have considered the application and the written submissions filed by the plaintiff/applicant. The issue for determination is *whether the plaintiff/applicant has satisfied the grounds to warrant grant of temporary injunction.*

6. The requirements for the grant of an interlocutory injunction was set out in the case of **Giella versus Cassman Brown & Co. Ltd [1973] EA 358** where it was stated:-

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience (E.A. INDUSTRIES VS. TRUFOODS [1972] E.A. 420.)”

7. A prima facie case was described in the case of **Mrao Ltd versus First American Bank of Kenya Ltd & Others Civil Appeal No. 39 of 2002**, as:-

“In civil case, 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 been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

8. On whether the plaintiff/applicant has established a prima facie case with a probability of success, it is not in dispute that the parties entered into a lease agreement dated 15th July, 2024 for the lease of the suit property for a period of 5 years and 6 months. The plaintiff/applicant contended that the defendant/respondent has been making threats of eviction yet there is a valid lease in place, and further, it has paid all rents and other charges envisaged in the lease. I have perused the documents in support of the application. The plaintiff/applicant has attached numerous debit notes including for the initial period of the lease i.e. 2019. The plaintiff/applicant has also annexed photographs of evidence of the destruction of its property. While the plaintiff/applicant contends that it has met its rent obligations, and as I understand it, a debit note is a document that is used to notify a buyer in this case the tenant of rent obligations that are due. These debit notes are not proof of payment of the rent. On the face of it, I am not

satisfied that the plaintiff/applicant has established a prima facie case.

9. Having found that the plaintiff/applicant has not met the first criteria, there would be no need to delve into the other criteria as that would be wasting time.
10. From the above, I find that the notice of motion dated 5th August, 2025 lacks merit and the same is hereby dismissed. I make no orders as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 5TH DAY OF MARCH, 2026.**

**HON. MBOGO C.G.
JUDGE
05/03/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Ndegwa for the Plaintiff/Applicant