

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E153 OF 2025

IMPALA SHUTTLE LIMITED.....PLAINTIFF

-VERSUS-

IMPALA CONNECTION T/A IMPALA
SHUTTLE (EA) LIMITED.....DEFENDANT

RULING

1. This Ruling is in respect to two applications. The 1st application is the plaintiff’s Notice of Motion dated 5th March 2025 filed pursuant to the provisions of Section 3A of the Civil Procedure Act and Order 40 Rules 1 & 4 of the Civil Procedure Rules, 2010, seeking an order to restrain the defendant from using the Mark “*Impala Shuttle*” on their motor vehicles, offices, receipts, uniforms and any other suffices (sic) that are capable of usage.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on 5th March 2025 by Mr. Simon Ngeshu Njeri, a Director of the plaintiff company. Mr. Ngeshu averred that the plaintiff has been operating a transport business providing travel arrangements, transportation, packaging, and storage services between Kenya and Tanzania under the name “*Impala Shuttle*” since 2018, and that the defendant also has been operating a similar business on the same route since 2024.
3. He deposed that the plaintiff is the legitimate owner of the Trademark “*Impala Shuttle*,” registered under Trademark number IMPALA SHUTTLE T.M.A

134648 on 25th July 2024. He claimed that the defendant was previously employed by the plaintiff from 2018 to May 2024, in a capacity that involved knowledge of the plaintiff's business operations, including its branding and Trademark. Mr. Ngeshu asserted that the defendant's use of the plaintiff's Registered Mark is deceptive, causing the public to confuse the defendant's services with those of the plaintiff, resulting in market confusion and damage to the plaintiff.

4. In opposition to the application dated 5th March 2025, the defendant filed a replying affidavit sworn on 18th March 2025 by Mr. Charles Waiganjo Njenga, a Director of Impala Connection Limited. Mr. Njenga averred that the said Company is affiliated to Impala Shuttle (EA) Limited, a company incorporated in Tanzania on 25th September 2020. He deposed that since its incorporation, Impala Shuttle (EA) Limited has operated in the public service vehicle transport business, providing transport, packaging, storage of goods, and travel arrangements along the Nairobi-Arusha-Moshi route. He stated that Impala Shuttle (EA) Limited registered its Trademark in Tanzania in 2023 under No. TZ/S/2023/1257 and has continuously used the Mark on its vehicles. Mr. Njenga claimed that the Mark and wording displayed on the said vehicles are distinct from those of the plaintiff herein, and there has been no passing off.
5. Mr. Njenga averred that Impala Shuttle (EA) Limited has authorized Impala Connection Ltd to use the Mark and branding, confirming that the use is lawful. He alleged that the plaintiff has failed to disclose material facts, as its Director, Simon Ngeshu Njeri, is also a Director of Impala Shuttle (EA) Limited and had authorized the defendant's use of the Trademark. He averred that prior to the plaintiff's registration of a similar Mark in Tanzania, it did

not disclose that Impala Shuttle (EA) Limited was the prior user of the Mark, and that it later initiated litigation in Tanzania seeking the company's dissolution, citing internal boardroom disputes. Mr. Njenga contended that the plaintiff's claim is therefore motivated by the said internal conflicts rather than genuine infringement. He maintained that there exists no infringement on the Trademark as used by Impala Connection Limited, in light of the consent of the parent company.

6. In a rejoinder, the plaintiff filed a further affidavit sworn on 21st March 2025 by Mr. Simon Ngeshu Njeri, a Director of the plaintiff company. Mr. Ngeshu deposed that the defendant is not affiliated to Impala Shuttle (EA) Limited, which is incorporated in Tanzania, and it had not authorized the defendant to trade under its name. He averred that Impala Shuttle (EA) Limited is not incorporated in Kenya, and it had not registered any Trademark in Tanzania as at 11th November 2023. He stated that the Mark relied upon by the defendant is registered under Edmund Robert Koka, not Impala Shuttle (EA) Limited.
7. He claimed that the defendant cannot claim affiliation or authorization to use the Mark yet continues to trade as "*Impala Shuttle*," using the plaintiff's registered Mark in Kenya, including on vehicles, offices, receipts, and uniforms, in a manner intended to deceive the public. Mr. Ngeshu maintained that this has caused confusion in the market and among the plaintiff's customers, as evidenced by complaints on the plaintiff's google review platform. He asserted that matters of ongoing disputes in Tanzania are irrelevant to this case, which concerns the defendant's infringement of the plaintiff's registered Mark in Kenya.

8. The 2nd application is the plaintiff's Notice of Motion dated 27th October 2025 filed pursuant to the provisions of Section 3A of the Civil Procedure Act and Order 40 Rules 1 & 4 of the Civil Procedure Rules, 2010, seeking an order to restrain the defendant from operating all their motor vehicles having the Mark "*Impala Shuttle*" at the offices of the plaintiff based at Jevanjee Gardens.
9. 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. Simon Ngeshu Njeri, a Director of the plaintiff company. Mr. Ngeshu averred that the defendant has moved its transport and shuttle operations to the plaintiff's registered business offices at Jevanjee Gardens, necessitating an order to restrain the defendant from operating any of their motor vehicles bearing the "*Impala Shuttle*" Mark at the plaintiff's offices.
10. In opposition to the application dated 27th October 2025, the defendant filed a replying affidavit sworn on 4th November 2025 by Mr. Charles Waiganjo Njenga, a Director of Impala Connection Limited. Mr. Njenga averred that the area of Jevanjee is a designated location authorized by Nairobi City County for motor vehicles plying the Nairobi-Arusha-Moshi route, and Impala Shuttle (EA) Limited, with which the defendant is affiliated, has historically used this area for its operations. He asserted that the plaintiff, who is also a Director of Impala Shuttle (EA) Limited, is aware of the said fact.
11. In a rejoinder, the plaintiff filed further and supplementary affidavits sworn by Mr. Simon Ngeshu Njeri, a Director of the plaintiff company, on 12th November 2025 and 24th November 2025, respectively. Mr. Ngeshu maintained that Impala Connection is neither affiliated with Impala Shuttle

E.A Ltd nor with Impala Shuttle Ltd, but it is using the business name to mislead clients by posing as Impala Shuttle Ltd in Nairobi. He claimed that the defendant has been parking buses and vans at the plaintiff's premises and using a similar logo and font to divert clients to Impala Connection. He stated that Impala Connection moved its operations to Jevanjee, creating unfair competition and undermining the plaintiff's services, while the plaintiff's business name and logo, protected under Simon Ngeshu, are being misused.

12.The applications herein were canvassed by way of written submissions highlighted on 15th October 2025. The plaintiff's submissions were filed by the law firm of Ojienda & Company Advocates on 3rd April 2025 and 13th January 2026, while the defendant's submissions were filed on 15th April 2025 by the law firm of Angaya & Company Advocates.

Application dated 5th March 2025.

13.Mr. Ojienda, learned Counsel for the plaintiff relied on the case of **Pharmaceutical Manufacturing Co v Novelty Manufacturing Ltd** [2001] KEHC 829 (KLR), and submitted that the registration of the Trademark "*Impala Shuttle*" under Trademark No. IMPALA SHUTTLE T.M.A 134648 on 25th July 2024, confers exclusive rights to its use within Kenya. He stated that the defendant's use of the name "*Impala Shuttle*" in offering transport, packaging, storage, and travel services constitutes Trademark infringement and passing off, as it is deceptively similar and has caused confusion among members of the public. Counsel cited the Court of Appeal case of **E.A. Industries Ltd v Trufoods Ltd** [1972] E.A. 420 and the Ugandan case of **Britania Allied Industries Limited v Aya Biscuits (U) Ltd** (HCT – 00 – CC- CS-024) [2012] UGCOMMC 61, and submitted that

the plaintiff has a right to bring legal action for the protection of its goodwill, under the law of unfair competition and Trademark infringement.

14. Mr. Ojienda placed reliance on the case of **Giella v Cassman Brown & Co. Ltd** [1973] EA 358, which established the threefold test, being a *prima facie* case, irreparable injury, and balance of convenience. He further relied on the Court of Appeal case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** [2003] KECA 175 (KLR), and submitted that the plaintiff has established a *prima facie* case with a probability of success to being granted the orders sought herein, by producing its certificate of registration confirming ownership of the Mark “*Impala Shuttle*”, within Kenya. He stated that the plaintiff also annexed screenshots of correspondence, email exchanges, and Google reviews evidencing consumer confusion and dissatisfaction, arising from the defendant’s conduct in passing off its services as those of the plaintiff.

15. Counsel cited the case of **Pius Kipchirchir Kogo v Frank Kimeli Tenai** [2018] KEELC 2424 (KLR), and contended that the plaintiff stands to suffer irreparable injury if a temporary injunction is not granted as it is incurring financial losses and damage to its business goodwill due to complaints from members of the public who mistakenly believed that they were receiving the plaintiff’s services. He asserted that the resulting confusion has adversely affected the plaintiff’s reputation and customer trust. In the end, Mr. Ojienda submitted that the balance of convenience tilts in favour of granting the orders being sought, as greater harm would be suffered if the injunction is denied.

16. Mr. Esilaba, learned Counsel for the defendant submitted that registration alone does not automatically entitle a proprietor to an injunction. Relying on

Section 10 of the Trade Marks Act and the principles in the case of **Giella v Cassman Brown & Co. Ltd** (supra), he argued that the plaintiff has failed to establish a *prima facie* case to warrant being granted the orders being sought herein. Counsel cited the case of **Solpia Kenya Limited v Style Industries Limited & another** [2015] KEHC 8101 (KLR), and stated that the defendant has demonstrated prior and continuous use of the Mark since 2018, a position not substantively rebutted by the plaintiff.

17.Mr. Esilaba stated that the plaintiff has not adduced sufficient evidence to demonstrate irreparable harm incapable of compensation by damages. In support of this position, he relied on the case of **Namaste Laboratories LLC v Zelfa Enterprises Limited** [2022] KEHC 240 (KLR). He further stated that irreparable injury must be actual, substantial, and demonstrable, not speculative, and that damages must be shown to be inadequate. He asserted that the balance of convenience tilts in favour of allowing this suit to proceed to full hearing without interlocutory restraint.

Application dated 27th October 2025.

18.Mr. Ojienda, learned Counsel for the plaintiff submitted that the plaintiff asserted ownership of the registered Trademark “*Impala Shuttle*”, Trade Mark No. IMPALA SHUTTLE T.M.A 134648 and contended that the defendant has unlawfully used an identical Mark and relocated its operations immediately adjacent to the plaintiff’s premises at Jevanjee Gardens. He argued that such conduct, as supported by photographic evidence annexed to the plaintiff’s supplementary affidavit, is calculated to deceive the public, mislead customers into believing an affiliation exists, and to divert business. He relied on the case of **Beiersdorf AG v Emirates Industrial Laboratory Ltd & another** [2002] eKLR, and submitted that the defendant’s actions

amount to passing off and infringement of the plaintiff's intellectual property rights.

19.Regarding irreparable harm, Mr. Ojienda claimed that the continued misuse of the plaintiff's business name, logo, and proximity of operations will cause loss of goodwill, brand dilution, reputational damage, and loss of customer trust, which are incapable of precise monetary quantification. He placed reliance on the case of **Martinair Africa Limited v Mohammad Akmal Mehar** [2011] KEHC 153 (KLR), and argued that damages would not be an adequate remedy.

ANALYSIS AND DETERMINATION.

20.I have considered the applications herein, and the affidavits filed in support thereof, the replying affidavits by the defendant and the written submissions by Counsel for the parties. The issue that arises for determination is whether the defendant should be restrained from using the Mark "*Impala Shuttle*" on its motor vehicles, offices, receipts, uniforms and any other surfaces that are capable of usage, and from operating all their motor vehicles having the Mark "*Impala Shuttle*", at the offices of the plaintiff based at Jevanjee Gardens.

21.An interlocutory injunction is a discretionary remedy that is granted on the basis of sound evidence and applicable legal principles. These principles were laid down by the Court in the case of **Giella v Cassman Brown & Company Limited** (supra), as hereunder –

Firstly, 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."

22. What constitutes a *prima facie* case was defined by the Court of Appeal in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (supra), as follows –

“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.

23. The plaintiff holds a certificate of registration for IMPALA SHUTTLE Trade Mark No. T.M.A 134648, registered in Kenya on 25th July 2024. Under the provisions of Section 7(1) of the Trade Marks Act, registration confers upon the proprietor exclusive rights to use the Mark within the jurisdiction in relation to the goods or services for which it is registered. In this case, the plaintiff produced the Certificate of Registration demonstrating its proprietary rights. In the case of **Pharmaceutical Manufacturing Company v Novelty Manufacturing Limited**: HCCC No.746 of 1998 (UR) cited by the Court in **Solpia Kenya Limited v Style Industries Limited & another** (supra), it was held as follows-

...Registration of a trademark confers the right to exclusive use of the mark. Infringement of the trade mark is a tort of strict liability. Intention and motive are irrelevant considerations. ...The right is a statutory one...

24. Further, in **Wilson Muriithi Kariuki T/A Wiskam Agencies v Surgipharm Limited** [2012] KEHC 4278 (KLR), it was held that –

...the position as of now is that the plaintiff is the registered proprietor of the said Trade Mark and until that proprietorship is successfully challenged, has the right to enjoy the benefits that accrue therefrom. To allow the defendants to also distribute a product bearing the same name would amount to introducing not only unnecessary confusion in the mind of the consumers of the said product but may engender chaos in the market.

25. The plaintiff's case is that the defendant is using a Mark identical to its registered Trademark in respect of similar transport and logistics services along the Nairobi-Arusha-Moshi route. The plaintiff stated that the defendant had relocated its operations to Jevanjee Gardens, immediately adjacent to the plaintiff's premises. In a bid to demonstrate that the defendant's use of a Mark identical to the plaintiff's Trademark has caused confusion among members of the public, the plaintiff produced photographic evidence and online complaints.

26. The defendant in opposition to the plaintiff being granted the orders being sought herein, asserted prior and continuous use of the Mark through affiliation with Impala Shuttle (EA) Limited, a company incorporated in Tanzania. The defendant contended that such prior use defeats the plaintiff's

claim to exclusivity. The defendant also averred that the plaintiff's Director is also a Director of the Tanzanian entity, and that the dispute in this suit arises from internal disagreements rather than the defendant's infringement of the plaintiff's Trademark.

27. The averments made reveal that the defendant was incorporated on 3rd May 2024, whereas the plaintiff's Trademark was registered on 25th July 2024, approximately two and a half months after the defendant's incorporation. The material placed before this Court discloses a contest as to prior use and corporate affiliation. The said matters are disputed and can only be conclusively determined upon full trial and production of *viva voce* evidence.

28. In the case of **Solpia Kenya Limited v Style Industries Limited & another** (supra), the Court in addressing the effect of prior and continuous use of a Trademark before and after its registration held as follows-

Therefore, as a principle of law, the fact of registration of trade mark per se does not entitle the proprietor of trade mark to an automatic injunction to restrain use of the trade mark by a person who has continuously used the trade mark prior to, during and after the registration of trade mark. In other words, in the face of a claim of prior user of trade mark, and absent other strong and cogent evidence, the fact of registration of trade mark does not invariably constitute a prima facie case with a probability of success.

29. This Court is cognizant of the fact that at this interlocutory stage, it is not required to make definitive findings on contested facts such as corporate affiliations, alleged consent, or prior use in another jurisdiction. All that this Court has to determine is whether the plaintiff has a *prima facie* case, and not

delve into the merits and demerits of the issues between the parties herein. This was the Court's position in the case of **Mbuthia v Jimba Credit Corporation Ltd** 988 KLR 1, where the Court held that –

In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.

30. The material placed before this Court suggests a claim of prior use, which is a triable issue requiring full ventilation at trial. Upon perusal of the annexures of the affidavits filed by the plaintiff in support of the applications herein, I am persuaded that it has not only demonstrated registered proprietorship of the impugned Mark in Kenya, but it has also demonstrated that the use of the impugned Trademark by the defendant has occasioned confusion amongst members of the public who benefit from its services, thus exposing the plaintiff to the risk of loss of business goodwill.

31. The plaintiff has demonstrated that the defendant is using an identical Mark in the same line of business within the same market, with a real likelihood of confusion. As to whether the defendant's alleged authorization or prior use in Tanzania constitutes a lawful defence is a matter for trial. Accordingly, this Court is satisfied that the plaintiff has demonstrated a *prima facie* right capable of protection and apparent infringement thereof.

32. In the circumstances, I find that the plaintiff has successfully demonstrated a *prima facie* case with a probability of success, to warrant being granted the orders being sought herein.

33. In regard to whether the plaintiff stands to suffer irreparable damage in the event that the instant applications are disallowed, it is now well settled that

irreparable injury must be actual, substantial and demonstrable, not speculative. The plaintiff's case is that the defendant's continued use of the impugned Mark and its proximity of operations to the plaintiffs, have led to confusion among customers, diversion of business, negative online reviews, and reputational harm. Goodwill attached to a Trade name is an intangible asset, the quantification of which is inherently difficult. Further, Courts have recognized that continued use of a confusingly similar Trade name, may occasion irreparable harm. In the case of **Nonny Gathoni Njenga & another v Catherine Masitsa & 2 others** [2015] KEHC 5655 (KLR), the Court in addressing the issue of irreparable damage held as follows –

...Courts have held time and again that damages are not always an adequate remedy in determining whether or not to grant an injunction and especially where there has been a breach of the law. In the case of Waithaka –vs- Industrial and Commercial Development Corporation (2001) KLR 374 Ringera J (as he then was) in granting an injunction went ahead and delivered himself thus at page 381: -

“As regards damages, I must say that in my understanding of the law, it is not an inexorable rule that where damages maybe an appropriate remedy, an interlocutory injunction should never issue. If that were the rule, the law would unduly lean in favour of those rich enough to pay damages for all manner of trespasses. That would not only be unjust but it would also be seen to be unjust.” ...

See also: Kanorero River Farm Ltd and 3 others –vs- National Bank of Kenya Ltd (2002) 2 KLR 207.

34. Since the plaintiff has demonstrated at an interlocutory stage that the defendant has infringed on its Trademark, I am persuaded that the plaintiff stands to suffer irreparable damage in the event that the orders being sought herein are not granted. This Court is of the considered view that while financial loss may in some instances, be compensable by damages, loss of goodwill, brand dilution, and erosion of consumer trust are injuries that are not easily quantifiable. The evidence of confusion through customer complaints and online reviews lends credence to the plaintiff's apprehension.

35. I am persuaded that if the defendant's conduct continues pending the trial of this suit, the plaintiff's goodwill and brand identity may suffer damage incapable of being compensated by an award of damages.

36. In respect to the balance of convenience, it is not in contest that the Jevanjee area is a designated operational zone for vehicles plying the Nairobi-Arusha-Moshi route. The defendant averred that restraining its operations would disrupt its business. The orders sought by the plaintiff are primarily directed at restraining the use of the impugned Mark in the same location, and operation of the defendant's business, in a manner that causes confusion with the plaintiff's business.

37. The plaintiff as the registered proprietor of the impugned Mark in Kenya, has demonstrated an existing legal right. Preserving that right pending trial maintains the *status quo ante* the infringement. Conversely, the defendant will still retain the liberty to conduct its transport business under a distinct name and branding that does not infringe upon the plaintiff's registered Mark. In weighing the competing interests, it is my finding that greater prejudice would be suffered by the plaintiff if the alleged infringement and confusion are permitted to continue. In light of the foregoing, I am persuaded

that the balance of convenience tilts in favour of protecting the registered proprietor of the Mark “*Impala Shuttle*”, namely, the plaintiff, pending the hearing and determination of this suit

38. The upshot is that the plaintiff’s application dated 5th March 2025 is merited, whereas its 2nd application dated 27th October 2025 is partly successful. The final orders are that-

- i) The defendant is hereby restrained from using the Mark ‘*Impala Shuttle*’ on its motor vehicles, offices, receipts, uniforms and any other surfaces that are capable of usage within Kenya;**
- ii) The defendant is hereby restrained from operating motor vehicles bearing the mark ‘*Impala Shuttle*’ within or in proximity to the plaintiff’s Jevanjee premises thereby causing confusion to the plaintiff’s customers; and**
- iii) Costs shall be in the cause.**

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI on this 6th day of March, 2026. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Ojienda for the plaintiff/applicant

Mr. Esilaba for the defendant/respondent

Ms B. Wokabi – Court Assistant.