



REPUBLIC OF KENYA



**Yussuf & another v Tannal Holdings Limited & 12 others (Civil Case E307 of 2023)
[2026] KEHC 3050 (KLR) (Commercial and Tax) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E307 OF 2023
F GIKONYO, J
MARCH 5, 2026**

BETWEEN

**KHADAR AHMED YUSSUF 1ST PLAINTIFF
AFRICANA ENERGY LIMITED 2ND PLAINTIFF**

AND

**TANNAL HOLDINGS LIMITED 1ST RESPONDENT
KITRA INDUSTRIES LIMITED 2ND RESPONDENT
DANTECH VENTURES LIMITED 3RD RESPONDENT
ESTTECH AFRICA LIMITED 4TH RESPONDENT
OSTAP AFRICA LIMITED 5TH RESPONDENT
WANDAR AFRICA LIMITED 6TH RESPONDENT
ANG LI LI 7TH RESPONDENT
TAN CHIN HENG 8TH RESPONDENT
TAN CHIN TEIK 9TH RESPONDENT
TAN SOK LENG 10TH RESPONDENT
CHE CHOONG HO 11TH RESPONDENT
TAN SING CHIA 12TH RESPONDENT**

AND

THE REGISTRAR OF COMPANIES INTERESTED PARTY



RULING

1. Before this court is the 1st plaintiff's notice of motion dated 28.7.2025. The application is brought under Order 40 Rules 1 & 2 of the Civil Procedure Rules. It is supported by an affidavit sworn by the applicant on 28.7.2025.
2. The applicant seeks, inter alia, the following orders pending the hearing and determination of the suit: -
 1. a temporary injunction to restrain the respondents from acting on or giving effect to a proclamation dated 23.7.2025 regarding Apartment No. 5, Block 5, Kenya Re-Gardens, South C, Nairobi (subject property).
 2. A declaration that the subject proclamation is unlawful, malicious, null and void ab initio and in blatant violation of the orders of 30.4.2024.
 3. A permanent injunction to restrain the respondents from collecting rent, harassing tenants or interfering in any way with the subject property.
 4. A declaration that the threatened auction amounts to contempt of court and issues such directions necessary to preserve the dignity of this court.
3. The respondents opposed the application through a replying affidavit sworn by Tan Sing Chia on 5.9.2025.

Applicant's case

4. The applicant's case is that: -
 1. they are the lawful and beneficial owners of the subject property.
 2. On 30.4.2024, the court issued a binding temporary injunction restraining the defendants from disposing of or interfering with the assets forming the subject matter of this suit.
 3. In defiance of the said orders, the defendants issued a proclamation through High Class Auctioneers seeking to attach certain movable properties situate in the subject property for an alleged debt of Kshs 2,520,000.
 4. The alleged debt is fictitious and that the plaintiffs have never been served with any judgment or decree to warrant execution.
 5. The defendants' conduct amounts to contempt of court and an abuse of the judicial process.

Response

5. The respondents contend that the suit property is registered in the name of the 1st respondent and that the applicant has no proprietary interest therein.
6. The respondents clarified that the proclamation issued under section 3 of the *Distress for Rent Act*, was a lawful exercise of distress for rent against a third-party tenant currently occupying the premises. They argued that the injunction of 30.4.2024 was specific to restraining the Registrar of Companies from removing the applicant as a director and barred the disposal of property but did not preclude the recovery of rent.



Submissions

7. The applicant and the respondents filed written submissions dated 2.10.2025 and 20.1.2026 respectively.
8. The applicant relied on *Giella v Cassman Brown* [1973] EA 358 on the conditions for the grant of an interlocutory injunction.
9. The applicant asserted that he has established a prima facie case because the proclamation is without lawful foundation and is in direct breach of subsisting orders; that he will suffer irreparable harm if unlawfully deprived of his personal property, including household items, which cannot be adequately compensated by damages.
10. The applicant further asserted that the balance of convenience favours preserving the status quo as ordered by this Court in 2024, to prevent the proceedings from being rendered nugatory.
11. On the obligation to obey court orders, the applicant relied on *Hadkinson v Hadkinson* [1952] All ER 567, *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] eKLR and *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR.
12. The respondents submitted that the applicant lacks the locus standi to bring the application as he has not availed evidence of ownership of the subject property.
13. The respondents asserted that the applicant has not met the threshold for the grant of the interlocutory injunction. They relied on *Giella v Cassman Brown* [supra], *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), *Mrao Ltd v First American Bank of Kenya Limited & 2 Others* [2003], KLR 123 and *Halsbury's Laws of England, 3rd Edition Volume 21, Paragraph 739 page 352, Kenya Commercial Finance Co. Ltd v Afraha Education Society* [2001] Vol. 1 EA 86.
14. The respondents relied on *Shah v Mbogo & Another* [1967] EA 116, where the court held that discretion cannot be exercised to cure indolence or inexcusable default.
15. The respondents reiterated that it is not in contempt of court. They contended that the applicant is misguided and misrepresenting facts and seeking the court's intervention in furtherance of his fraudulent activities. They relied on *Mbogo & Another v Shah* [1968] EA 93 where the court held that discretion must be exercised judiciously and not to assist a party who has deliberately sought to obstruct or delay justice.

Analysis and Determination

16. Having considered the application, the rival affidavits and submissions, the issues for determination are:
 1. Whether the applicant has met the threshold for the grant of an interlocutory injunction.
 2. Whether the respondents' conduct in issuing the proclamation amounts to contempt of the court orders of 30.4.2024.
17. For an interlocutory injunction to be issued, the applicant must establish; a prima facie case with a probability of success, irreparable harm that cannot be compensated by way of damages if the injunction is not granted and that the balance of convenience tilts in favour of granting the injunction. *Giella v Cassman Brown* [supra]



18. The orders of 30.4.2024 read in part: -
- “b) A temporary injunction hereby issues barring the 1st, 7th, 8th, 9th, 10th, 11th and 12th respondent from disposing off any properties belonging to the 1st respondent pending the hearing and determination of the suit.”
19. In a nutshell, this suit emanated from a dispute after the respondents allegedly removed the applicant as a director of the 1st respondent.
20. In the ruling of 30.4.2024 the court noted the key averments by the applicant, including that he and the 7th to 12th respondents acquired various properties together including the subject property. That in 2018 he realized that the 7th to 12th respondents fraudulently transferred most of the properties registered under the 2nd to 6th respondents to the 1st respondent and they tried to remove him as a director of the 1st respondent, but he lodged a caveat with the interested party. The applicant also contended that Milimani CMCC No. 5879 of 2017 involving him and the 1st to 3rd respondents regarding the subject property is pending.
21. Some of the respondent’s averments were also captured, that the applicant rented out the subject property purchased by the 12th respondent in February 2014 without consent and was collecting rent and had attempted to sell the apartment for Kshs. 18,000,000/-. That the applicant never participated in the acquisition thereof and was excluded from management of the companies due to embezzlement of the companies’ funds. That CMCC No. 5879 of 2017 does not relate to the applicant’s directorship and was not a bar to the removal of the applicant as a director of the 1st respondent.
22. The court found that the applicant had established a prima facie case that needed to go for trial together with the issues of fraud raised by the respondents. That the applicant stands to suffer irreparable harm should the orders sought not be granted as there was risk of properties being transferred or sold to third parties and its efforts to prosecute would be prostrated because the respondents are foreigners. That the balance of convenience tilted in favour of the applicant who is admittedly a director and shareholder in the respondent companies.
23. From the foregoing, it is evident that the subject property is a feature in the dispute between the applicant and the respondents.
24. The applicant claims beneficial ownership of the property.
25. The respondents contended that the 1st respondent is the owner of the property and that it is entitled to levy distress for rent through the proclamation.
26. As long as the controversy of directorship and shareholding of the applicant in the respondent companies is not yet resolved, the respondents’ submission that the applicant lacks locus standi to bring this application is not defensible.
27. The court already considered the respondents’ claim that the applicant rented out the subject property purchased by the 12th respondent in February 2014 without consent and was collecting rent.
28. The court found that these allegations of fraud were proper for consideration and determination in a full trial.
29. In the circumstances of this case, the applicant has established a prima facie case as the subject property is part of the subject matter in this suit. It is among the 1st respondent’s properties which the court barred disposal of pending the hearing and determination of the suit.



30. I also find that the applicant would suffer irreparable harm unless the subject property are preserved.
31. The balance of convenience tilts in favour of the applicant as it is in the interest of justice for the subject matter of the suit to be preserved until the rights of the parties are determined.
32. On the issue of contempt; I am of the considered opinion that the orders of 30.4.2024 did not bar the proclamation of the movable assets situate in the subject property. Therefore, the respondents are not in contempt of those orders. Hence, prayers 2 and 4 fail.
33. Prayer 3 seeking a permanent injunction fails as no special circumstances have been established for its issuance, and thus, it can only be issued upon full trial and determination of the matter.

Disposal

34. In the upshot, the application dated 28.7.2025 is allowed in part, in the following terms: -
 1. a temporary injunction is issued restraining the respondents from acting on or giving effect to a proclamation dated 23.7.2025 regarding Apartment No. 5, Block 5, Kenya Re-Gardens, South C, Nairobi (subject property pending the hearing and determination of the suit.
 2. Any prayer that has not been specifically granted is deemed to have been denied.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5TH DAY MARCH, 2026

F. GIKONYO M

JUDGE

In the presence of: -

Samora for 1st, 2nd, 3rd, 7th, 8th, 9th, 10th & 11th defendant/ Respondents

Mahat for Plaintiff/Applicant

CA – Ivan/Aggrey

