

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC LAND CASE NO. E474 OF 2025**

**GOURMET CAFÉ LIMITED ..... 1<sup>ST</sup>**

**PLAINTIFF**

**GOLDROCK INTERNATIONAL  
ENTERPRISES COMPANY (K)LIMITED ..... 2<sup>ND</sup>**

**PLAINTIFF**

**VERSUS**

**PARADISE SAFARI PARK LIMITED ..... 1<sup>ST</sup>**

**DEFENDANT**

**KENYA AIRPORTS AUTHORITY ..... 2<sup>ND</sup>**

**DEFENDANT**

**RULING**

1. What is before the Court for determination is the Plaintiffs' Notice of Motion application dated 19<sup>th</sup> September 2025 where they seek the following Orders:

**a) Spent.**

**b) Spent.**

**c) Spent.**

**d) That pending the hearing and determination of the present suit, this Honourable court be pleased to issue an order of temporary prohibitory injunction, as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents, their employees, agents, assigns, licensees, from leasing, licensing, occupying the premises, particularly premises at Terminal 1A, food court/cafeteria, lot J6, in respect of premises hosting G-Café, and premises on Terminal 2 (Domestic Departures ) hosting G-Café, both within the Jomo Kenyatta International Airport (JKIA).**

**e) That pending the hearing and determination of the present suit, this Honourable Court be pleased to issue an order of temporary mandatory injunction, as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their employees, agents, assigns, licensees, to reinstate the 1<sup>st</sup> Plaintiff/Applicant as the licensee of the premises, particularly premises as Terminal 1A, food court/cafeteria, lot J6, in respect of premises hosting G Café and**

**premises on Terminal 2 (Domestic Departures) hosting G-Café, both with the Jomo Kenyatta International Airport (JKIA), as was the status quo prior to the eviction undertaken on September 12,2025.**

**f) That this Honourable Court be pleased to award the Plaintiffs the costs of the present Notice of Motion application.**

2. The application is premised on grounds on its face and on the supporting affidavit of SANY YEUL PARK, director in both Plaintiffs. He avers that through a Memorandum of Understanding (MOU) dated 10<sup>th</sup> July 2012, the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant agreed to jointly bid for space at the Jomo Kenyatta International Airport (JKIA) for catering outlets. He alleged that it was agreed that the tenders would be submitted in the name of the 1<sup>st</sup> Defendant and that the profits would be shared in the manner stipulated in the MOU.

3. He claims that the aforementioned joint bid was successful and it resulted into three (3) licenses between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants being issued, which were: (i) A license agreement dated 5<sup>th</sup> September 2013, for space at the JKIA Terminal Unit 1A, for the purpose of providing catering services; (ii) A license agreement dated 5<sup>th</sup> September 2013, for space at the JKIA Terminal Unit 1A, for catering services-pastries, Kenyan coffee and tea; (iii) A license agreement dated 28<sup>th</sup> November 2013 for space at the JKIA terminal 2 - domestic departure, for the purposes of providing catering services-Kenyan coffee.
4. He contends that after the licenses were issued, the 1<sup>st</sup> Plaintiff and the 1<sup>st</sup> Defendant entered into a service operation agreement, outlining the responsibilities of each party in running the catering ventures. He explains that at the time of executing the said service operation agreement in December 2014, the 1<sup>st</sup> Defendant informed the 2<sup>nd</sup> Plaintiff of its intention to withdraw from the joint venture agreement

on the basis that it was restructuring and streamlining its offerings. Further, subsequently, it was agreed that the 1<sup>st</sup> Defendant would assign the licenses to the 2<sup>nd</sup> Plaintiff or an entity of its choice to enable it continue executing the license agreements.

5. He contends that the 2<sup>nd</sup> Plaintiff designated the 1<sup>st</sup> Plaintiff to be the assignee of two (2) licenses to the premises at JKIA thus vide a letter dated 17<sup>th</sup> December 2014, the 1<sup>st</sup> Defendant sought assignment of the licenses issued by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Plaintiff, of which the 2<sup>nd</sup> Defendant granted consent vide its letter dated 17<sup>th</sup> December 2014. He confirms that parties executed an Agreement for Assignment of License and pursuant thereto, the 1<sup>st</sup> Plaintiff has been operating two (2) catering outlets at the JKIA from January 2015, which have been trading as G-café. He reiterates that having transferred its rights, the 1<sup>st</sup> Defendant has not been involved in operations and management of the said catering outlets.

6. He claims that despite extinguishing its rights to the license, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have conspired to unlawfully divest the license enjoyed by the 1<sup>st</sup> Plaintiff and are asserting a claim over the impugned licenses. He avers that on 12<sup>th</sup> September 2025, the 1<sup>st</sup> Defendant and its servants/agents made a forced entry into G-café at terminal 1A and the premises at JKIA terminal 2 (domestic departures) and carted away its machinery, inventory, furniture including fittings without serving the Plaintiffs' with any notice to vacate.
7. He accuses the 2<sup>nd</sup> Defendant of unilaterally forcefully reinstalling the 1<sup>st</sup> Defendant, yet it approved assignment of license in writing.

### **Response**

8. The application is opposed by the 1<sup>st</sup> Defendant vide the replying affidavit of its general manager, one Japhlet Kimathi. While he admits that the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup>

Defendant entered into an MOU dated 10<sup>th</sup> July 2012 with an intention to jointly bid to the 2<sup>nd</sup> Defendant for the award of shops at JKIA, he avers that the said joint venture was never implemented because of non-performance of material terms including breach of its Clause 1.2, which contemplated that there would be joint mobilization of resources and contribution of expertise by the parties.

9. He asserts that following the alleged failed joint venture, the 1<sup>st</sup> Defendant independently submitted to the 2<sup>nd</sup> Defendant a bid for the award of licenses to operate shops at JKIA. Further, that its bid was successful and it was awarded two (2) licenses to carry on business for a term of five (5) years from the time of commissioning as the premises were then under construction. He insists that of the two (2) licenses, one was to operate from shop J5 and is the 1<sup>st</sup> Defendant's business christened 'Mango Plus' while the other one entailed selling pastries, Kenyan coffee and tea at shop J6 and both are located at Terminal 1A, at JKIA.

**10.** He contends that upon completion of construction of a new domestic departures' terminal, the 2<sup>nd</sup> Defendant granted to the 1<sup>st</sup> Defendant a License to provide coffee services from a shop located at Terminal 2A of JKIA for a term of five (5) years from 1<sup>st</sup> January 2015.

**11.** He avers that the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant did attempt to revive the non-performed MOU dated 10<sup>th</sup> July 2012 by intending to enter into a Service Operation Agreement to modify their initial understandings and arrangements but it never materialized. He reiterates that the parties did make a further attempt to revive the impugned failed joint venture vide an Agreement for Assignment of a License dated 24<sup>th</sup> January 2015 but it was never performed as envisaged by the parties, thus the 2<sup>nd</sup> Defendant continued to treat and deal with the 1<sup>st</sup> Defendant as the sole Licensee of Shops J5 and J6 at Terminal 1A and the Coffee Shop in Terminal 2A at JKIA.

**12.** He claims that the 1<sup>st</sup> Defendant applied to the 2<sup>nd</sup> Defendant for renewal of licenses for the aforementioned three (3) Shops and was granted exclusive licenses with effect from 1<sup>st</sup> October 2025, thus they are subsisting and have not been assigned to the Plaintiffs or any other third party.

**13.** He asserts that acting under the presumption that there had been a valid assignment of Licenses for Shop J6 at Terminal 1A and Coffee Shop at Terminal 2 at JKIA, the Plaintiffs continued to occupy and use the shops but continuously failed to pay the annual license fees to the 2<sup>nd</sup> Defendant as and when they became due thus the Plaintiffs had accumulated arrears of Kenya Shillings 7,142,378.00 as of 25 August 2025.

**14.** He admits that on 12<sup>th</sup> September 2025, the 1<sup>st</sup> Defendant peacefully

re-took possession of Shop J6 at Terminal 1A and Coffee Shop at Terminal 2 at JKIA. Further, that at the time, detailed inventories of all movable assets and stock removed

from the two (2) shops were recorded and countersigned by officers of the 2<sup>nd</sup> Defendant, which he annexed. He further states that through its Advocates letter dated 23<sup>rd</sup> September 2025, the 1<sup>st</sup> Defendant formally notified the 2<sup>nd</sup> Plaintiff of the removal of the movable assets and stock from the shops, and called upon it to collect the same from their premises but they have refused to do so.

- 15.** He annexed a copy of a valuation report on the inventories from the two (2) shops done by Capital Valuers Limited on the 1<sup>st</sup> Defendant's instructions and avers that the 1<sup>st</sup> Defendant reserves its right to set-off of any net proceeds against monies owed by the Plaintiffs.
- 16.** The application is also opposed by the 2<sup>nd</sup> Defendant vide the replying affidavit of Umi Luhindi, who serves as an officer at its Marketing and Business Development Department. He confirms that about 2013, the 2<sup>nd</sup> Defendant published an invitation for tender No. KAA/774/2011-2012 for the development and management of catering outlets and it

received bids and thereafter the 1<sup>st</sup> Defendant emerged as the successful bidder. He explains that subsequently, the 1<sup>st</sup> Defendant was awarded a five (5)-year license agreement dated 5<sup>th</sup> September 2013, for space at the JKIA terminal 1A for the purpose of providing catering services but the said license has since expired.

**17.** He confirms that the 1<sup>st</sup> Defendant did request the 2<sup>nd</sup> Defendant to assign the said licenses to the 1<sup>st</sup> Plaintiff for the shop at terminal 1A and the cafeteria at terminal 2 on 17<sup>th</sup> December 2014 but maintains that no assignment was effected as no Assignment Agreement was presented to the 2<sup>nd</sup> Defendant.

**18.** He avers that there is no License Agreement between the Plaintiffs and the 2<sup>nd</sup> Defendant and that any eviction was due to dealings between 1<sup>st</sup> Plaintiff and the 1<sup>st</sup> Defendant, which the 2<sup>nd</sup> Defendant is not privy to.

**19.** The 2<sup>nd</sup> Defendant also filed Grounds of Opposition in which it avers that the orders sought by the Plaintiffs are incapable of being granted against the 2<sup>nd</sup> Defendant, as they would have the effect of unlawfully interfering with its statutory powers and proprietary rights as conferred under sections 12 and 14 of the Kenya Airports Authority Act.

**20.** The application was canvassed by way of written submissions.

### **Submissions**

**21.** The Plaintiffs reiterate their averments in the supporting affidavit and submit that they have met the threshold for grant of injunctions as set in the case of **Giella v Cassman Brown [1973] EA 358**, since they have established a prima facie case by establishing that they hold lawful licenses assigned by the 1<sup>st</sup> Defendant and approved by the 2<sup>nd</sup> Defendant. Further, that loss of business reputation, goodwill, cultivated over ten years at JKIA, customer base

and long-standing commercial relationships cannot be adequately compensated by monetary damages.

22. They submit that they have established clear and exceptional circumstances that justify the grant of temporary mandatory injunctions since their eviction was unlawful, without notice, and without any court order or procurement process for new tenders despite the 1<sup>st</sup> Defendant having voluntarily assigned its rights to them in 2015. Further, that reinstating them in the suit premises preserves the status quo ante while denying the injunction would reward unlawful conduct and perpetuate an illegality.

23. To buttress their averments, the Plaintiffs relied on the following decisions: **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] KEELC 2424 (KLR); Vells India Limited & another v Gathu & 2 others (Commercial Case E085 of 2024) [2025] KEHC 15326 (KLR) (Commercial and Tax) (24 October 2025) (Ruling); Kenya Breweries Limited & another v Washington O.**

**Okeyo [2002] KECA 284 (KLR); Mediheal Hospital & Fertility Centre Limited & another v Bank of India (Kenya) & another (Civil Suit E026 of 2024) [2025] KEHC 15427 (KLR) (30 October 2025) (Ruling) and Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] KEHC 7263 (KLR).**

24. The 1<sup>st</sup> Defendant submits that the Plaintiffs have not established a prima facie case thus they are not deserving of a discretionary order having failed to pay accumulated rental arrears of Kenya Shillings 7,142,378,00 for the shops in respect of which they seek discretionary orders. Further, that no irreparable loss has been demonstrated at all given that in their plaint, they pray for award of damages pleaded in precise monetary values thus if they eventually succeed in the main suit, an award of special and general damages will be adequate compensation.

25. It also submits that the Plaintiffs have not met the threshold

for grant of both the interlocutory prohibitory and mandatory

injunction having failed to meet any exceptional and special circumstances that warrant issuance of an interlocutory mandatory injunction which would in effect determine the suit at an interlocutory stage.

26. To buttress its averments, the 1<sup>st</sup> Defendant relied on the case of Kenya **Airport Authority v Paul Njogu Mungai & 2 others [1997] KECA 261 (KLR)**.

27. The 2<sup>nd</sup> Defendant did not file submissions.

### **Analysis and Determination**

28. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivaling submissions, the following are the issues for determination:

- **Whether the Plaintiffs have met the threshold for grant of temporary prohibitory injunction restraining the Defendants from interfering with the suit premises.**

- **Whether the Plaintiffs have established special circumstances warranting grant of temporary mandatory injunction.**

**29.** In line with the principles established in the case of **Giella v Cassman Brown (1973) EA 358**, I will proceed to analyze whether the Plaintiffs have indeed established a prima facie case to warrant the orders of interlocutory injunction as sought.

**30.** The Plaintiffs' case is that the Defendants have unlawfully evicted them from their premises hosting G-Café at Terminal 1A and Terminal 2 (Domestic Departures), both within JKIA. It is their case that they were evicted despite the fact that they hold lawful licenses to run the said premises assigned by the 1<sup>st</sup> Defendant and approved by the 2<sup>nd</sup> Defendant. They assert that the said assignment of license arises from an MOU dated 10<sup>th</sup> July 2012, between the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant to jointly bid for space at JKIA for catering

outlets and that the 1<sup>st</sup> Defendant pulled out of the MOU and assigned all rights to them.

**31.** On its part, the 1<sup>st</sup> Defendant denies assigning license rights to the Plaintiffs and avers that following the collapse of their MOU dated 10<sup>th</sup> July 2012, it independently bid for space at JKIA where it solely runs Shops J5 and J6 at Terminal 1A and a Coffee Shop in Terminal 2A. The 1<sup>st</sup> Defendant insists that of the two (2) licenses, one was to operate from shop J5 and is the 1<sup>st</sup> Defendant's business christened 'Mango Plus' while the other one entailed selling pastries, Kenyan coffee and tea at shop J6 and both are located at Terminal 1A, at JKIA. It confirms that the 2<sup>nd</sup> Defendant only granted to it a License to provide coffee services from a shop located at Terminal 2A of JKIA for a term of five (5) years from 1<sup>st</sup> January 2015.

**32.** It explained that together with the 2<sup>nd</sup> Plaintiff, they attempted to revive the non-performed MOU dated 10<sup>th</sup> July 2012 by intending to enter into a Service Operation

Agreement to modify their initial understandings and arrangements but it never materialized. Further, that the parties did make a further attempt to revive the impugned failed joint venture vide an Agreement for Assignment of a License dated 24<sup>th</sup> January 2015 but it was never performed as envisaged by the parties, thus the 2<sup>nd</sup> Defendant continued to treat and deal with it as the sole Licensee of Shops J5 and J6 at Terminal 1A and the Coffee Shop in Terminal 2A at JKIA.

**33.** The 2<sup>nd</sup> Defendant contends that it is not privy to transactions between the Plaintiffs and the 1<sup>st</sup> Defendant and that if orders sought are granted, it would have the effect of unlawfully interfering with its statutory powers and proprietary rights as conferred under sections 12 and 14 of the Kenya Airports Authority Act.

**34.** Looking at the documents presented by all the parties herein, I note there was indeed a Deed of Assignment of License between the 1<sup>st</sup> Defendant and 1<sup>st</sup> Plaintiff dated the

24<sup>th</sup> January, 2015. Further, that the Assignment of License was approved by the 2<sup>nd</sup> Defendant, that had initially issued a Letter of offer for Assignment of License dated 28<sup>th</sup> November, 2014. I note the Plaintiffs have already been evicted from the suit premises where they were running businesses as licensees of the 1<sup>st</sup> Defendant. On perusal of the License agreement, there was no indication on when the said license would expire. However, as per the original License being assigned, it was supposed to subsist for five years commencing 1<sup>st</sup> January, 2015. This in essence means the original License with 2<sup>nd</sup> Defendant was to expire on January, 2020 and there is no indication if the said license was renewed. Further, the Defendants claim the Plaintiffs were in arrears of making payments of certain monies as annual license fees, which the Plaintiffs have neither refuted nor provided proof of payment.

**35.** Based on the facts as presented while applying the principles set out in the case of **Mrao Ltd v First American Bank**

**Limited (2003) KLR 125**, I find that since the Plaintiffs have already been evicted from the suit premises and failed to make certain payments as had been agreed upon in the License Assignment Agreement, they have failed to establish a prima facie case to warrant grant of interlocutory injunction as sought. I opine that the Plaintiffs can still seek monetary compensation including damages for breach on the part of the Defendants.

**36.** In further associating myself with the decision **Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR** where the Court of Appeal held that where a party has failed to establish a prima facie case, the Court need not proceed to make a determination of the other two limbs on injunction and I will hence decline to do so.

**37.** On the second issue, a mandatory injunction can be issued at the

interlocutory stage only in exceptional circumstances. In **Nation Media Group & 2 others v John Harun Mwau [2014] eKLR**, the Court of Appeal stated that:

*“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have stated a temporary mandatory injunction can only be granted in exceptional and in the clearest of cases.”*

**38.** From the facts before Court which I have highlighted above, noting that the Plaintiffs are no longer in possession of the suit premises. Further, noting that the Plaintiffs occupation of the suit premises arose from a license between the 1<sup>st</sup> Plaintiff and 1<sup>st</sup> Defendant which never contained a termination clause, I opine that the said license cannot

supersede the terms of the main license, which was to subsist for five years from January, 2015. In the circumstances, while associating myself with the decision cited, I find that the Plaintiffs are hence not entitled to orders of mandatory interlocutory injunction as sought.

**39.** In the foregoing, I find the instant Notice of Motion application unmerited and will proceed to dismiss it.

**40.** Each party to bear their own costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS  
17<sup>TH</sup> DAY OF MARCH, 2026**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

Mwango for Plaintiffs

Rugo for 1<sup>st</sup> Defendant

Court Assistant: Joan

ORIGINAL