



REPUBLIC OF KENYA



**Roy Hauliers Limited v I & M Bank Limited (Civil Case E535 of 2024)  
[2026] KEHC 3486 (KLR) (Commercial and Tax) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3486 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E535 OF 2024  
PM MULWA, J  
MARCH 12, 2026**

**BETWEEN**

**ROY HAULIERS LIMITED ..... PLAINTIFF**

**AND**

**I & M BANK LIMITED ..... DEFENDANT**

**RULING**

1. This ruling concerns the Defendant's Notice of Motion dated 25<sup>th</sup> July 2025 filed under Article 50 of the *Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 1 Rule 10, Order 6 Rule 7 and Order 51 Rule 1 of the *Civil Procedure Rules*.
2. The Defendant/Applicant seeks the following substantive orders:
  - i. spent
  - ii. That the Court grant leave to the Defendant to call up the guarantees issued by the Plaintiff's guarantors, namely the Estate of the late Omar Rahemtulla Yakub, Ory Investments Limited, Sarfaraz Omar Yakub and Shemir Omar Yakub, to settle the outstanding debt.
  - iii. That the Defendant be granted leave within fourteen (14) days to call up the said guarantees.
  - iv. That upon the grant of leave, the Defendant be allowed to amend its Statement of Defence dated 18<sup>th</sup> December 2024 and filed on 20<sup>th</sup> December 2024 so as to join the said guarantors as defendants in the counterclaim.
  - v. That the annexed draft amended Statement of Defence and Counterclaim be deemed duly filed upon payment of the requisite court fees.
  - vi. That the costs of the application be in the cause.



3. The application is premised on the grounds set out on the face of the motion and is supported by the affidavit of Lilian Omanji, the Debt Recovery Manager sworn on 31<sup>st</sup> July 2025. She deposes that by a ruling delivered on 8<sup>th</sup> May 2025, this Court granted a temporary injunction restraining the Defendant from calling up the Plaintiff's guarantors, namely the Estate of the late Omar Rahemtulla Yakub, Ory Investments Limited, Sarfaraz Omar Yakub and Shemir Omar Yakub, pending the hearing and determination of the suit. The Court also restrained the Defendant from commencing liquidation proceedings against the Plaintiff.
4. The deponent states that the Defendant does not contest the order restraining it from initiating liquidation proceedings against the Plaintiff. However, it is aggrieved by the order restraining it from calling up the guarantees and therefore seeks leave to enforce the guarantees and amend its defence so as to pursue recovery from the guarantors.
5. It is further deposed that the continued existence of the injunction is prejudicial to the Defendant Bank as it prevents the enforcement of contractual guarantees executed in its favour. According to the Defendant, the guarantors expressly agreed that the Bank would be at liberty to call up the guarantees upon default by the Plaintiff.
6. The deponent further avers that the injunction effectively prevents the Defendant from amending its Statement of Defence and instituting a counterclaim against the guarantors, which is otherwise permissible under the [Civil Procedure Rules](#) at any time before judgment.
7. It is further deposed that the guarantors executed guarantees and indemnities securing the Plaintiff's indebtedness to the Bank in the following amounts:
  - i. Estate of the late Omar Rahemtulla Yakub – USD 3,960,600
  - ii. Shemir Omar Yakub – USD 3,960,600
  - iii. Sarfaraz Omar Yakub – USD 3,960,600
  - iv. Ory Investments Limited – KShs. 72,105,000.
8. The application is opposed through the Replying Affidavit sworn by the Director of the Company Sarfaraz Omar Yakub on 6<sup>th</sup> August 2025. He deposes that the present application is, in substance, an attempt to challenge or set aside the ruling delivered by this Court on 8<sup>th</sup> May 2025, which restrained the Defendant from calling up the guarantees pending the hearing and determination of the suit.
9. He contends that the application is omnibus in nature as it seeks to introduce new parties into the proceedings through a counterclaim while at the same time inviting the Court to revisit its earlier ruling.
10. It is further deposed that the guarantors are not necessary parties to the present proceedings because the dispute before the Court concerns the alleged sale of the Plaintiff's motor vehicles at an undervalue contrary to the consent judgment entered in Nairobi High Court (Commercial & Tax Division) Civil Case No. E492 of 2023, to which the guarantors were not parties.
11. He asserts that the Plaintiff, as dominus litis, has control of the suit and the Defendant cannot introduce new parties through a counterclaim in the circumstances.
12. He further avers that no sufficient grounds have been established and the Defendant has other legal avenues available to pursue the guarantors should the existence and extent of the debt be determined.



13. The application was canvassed by way of written submissions. The Plaintiff submissions are dated 7<sup>th</sup> November 2025, while the Defendant filed submissions dated 29<sup>th</sup> August 2025.

### **Analysis and Determination**

14. I have considered the application, the affidavits on record and the submissions of the parties, the following issues arise for determination:
- i. Whether the Defendant has established grounds for setting aside or varying the injunction issued on 8<sup>th</sup> May 2025 under Order 40 Rule 7 of the *Civil Procedure Rules*
  - ii. Whether the Defendant should be granted leave to amend its defence and counterclaim.
15. The jurisdiction of the Court to discharge, vary or set aside an injunction is provided under Order 40 Rule 7 of the *Civil Procedure Rules*, which states:
- “Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”
16. It is trite that the court has unfettered discretion to discharge or vary an injunction if the ends of justice demand so. This position was well settled in the case of *St Patricks Hill School Ltd v Bank of Africa Kenya Ltd* (2018) KEHC 4886 (KLR).
17. By its order of 8<sup>th</sup> May 2025, the Court restrained the Defendant from calling up the guarantees issued by the Plaintiff’s guarantors pending the hearing and determination of the suit. The object of that interlocutory order was to preserve the status quo so that the rights and obligations of the parties, including those arising from the guarantees, may be examined at the trial upon a full evidentiary record.
18. The Defendant contends that the injunction is prejudicial as it prevents the enforcement of contractual guarantees. While the Court recognizes the Defendant’s contractual rights, the enforcement of guarantees cannot be considered in isolation from the underlying dispute concerning the principal transaction and the alleged debt.
19. At this interlocutory stage, the paramount consideration is the preservation of the subject matter of the litigation. Lifting the injunction would expose the guarantors to immediate enforcement and may render the pending proceedings nugatory before the issues in dispute are determined.
20. In those circumstances, and in the exercise of the Court’s discretion, I find no sufficient basis to discharge or vary the orders issued on 8<sup>th</sup> May 2025. The Defendant’s invitation to set aside the injunctive orders is therefore declined.
21. The Defendant also seeks leave to amend its defence so as to join the Plaintiff’s guarantors as defendants in the counterclaim. Under Order 8 Rules 3 and 5 of the *Civil Procedure Rules*, the Court retains a wide discretion to permit amendments of pleadings at any stage of the proceedings where such amendments are necessary for determining the real issues in controversy.
22. Equally, the joinder of parties is governed by Order 1 Rule 10(2) of the Civil Procedure Rules, which empowers the Court to add a party whose presence is necessary to enable it effectually and completely adjudicate upon all questions involved in the suit.
23. While amendments are generally allowed so as to facilitate the determination of disputes on their merits, the proposed parties must nonetheless be necessary for the effective resolution of the issues before the Court.



24. In the present case, the Defendant seeks to introduce the Plaintiff's guarantors in a counterclaim for the enforcement of guarantees. However, the dispute before the Court concerns the dealings between the Plaintiff and the Defendant, and the guarantors were not parties to the transaction giving rise to the present proceedings. Their liability arises under separate contracts of guarantee and is contingent upon the determination of the principal debt. In those circumstances, the Court is not persuaded that the presence of the guarantors is necessary for the determination of the issues presently before it. Their joinder would introduce collateral questions relating to the enforcement of guarantees and would unnecessarily broaden the scope of the proceedings.
25. Accordingly, the Court declines to grant leave for the proposed amendment and joinder.
26. In the result, and for the reasons set out above, the Court finds that the Defendant has not established sufficient grounds to warrant the discharge or variation of the injunctive orders issued on 8<sup>th</sup> May 2025.
27. Consequently, the Defendant's Notice of Motion dated 25<sup>th</sup> July 2025 is dismissed with costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH 2026.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Ayieko Owino for Plaintiff

Mr. Ochieng for Defendant

Court Assistant: Carlos

