



Majani Hotels Group Limited v Tea Hotel Limited & 4 others (Election Petition Appeal (Application) E042 of 2025) [2026] KEELC 2048 (KLR) (16 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2048 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELECTION PETITION APPEAL (APPLICATION) E042 OF 2025
LA OMOLLO, J
APRIL 16, 2026**

BETWEEN

MAJANI HOTELS GROUP LIMITED PLAINTIFF

AND

TEA HOTEL LIMITED DEFENDANT

AND

TEA HOTEL LIMITED PLAINTIFF TO THE COUNTERCLAIM

AND

MAJANI HOTELS GROUP LIMITED 1ST DEFENDANT TO THE COUNTERCLAIM

RICCOBELLO COMPANY LIMITED 2ND DEFENDANT TO THE COUNTERCLAIM

FREDRICK OCHIENG AMAYO . 3RD DEFENDANT TO THE COUNTERCLAIM

RULING

Introduction.

1. This ruling is in respect of the Plaintiff’s Notice of Motion application dated 21st August, 2025 and the Defendant’s Notice of Motion application dated 9th October, 2025.
2. The Plaintiff/Applicant’s application dated 21st August, 2025 is expressed to be brought under Article 159 of *the Constitution* of Kenya, Section 19 of the *Environment and Land Court Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 of the Civil Procedure Rules.
3. The application seeks the following orders;



- a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to issue an interim order restraining the Defendant/ Respondent their agent, servants, or any person acting on their behalf from terminating the lease agreement dated 1st August, 2023 pending the hearing and determination of the main suit.
 - d. Spent
 - e. Spent
 - f. That pending the hearing and determination of this suit, this Honourable Court be pleased to order the Defendant to render and reconcile a true account of rent due under the lease by crediting all sums paid by the Plaintiff towards renovations, utilities, and other agreed overheads, and to file the reconciled accounts in Court within thirty (30) days and if necessary, verified by an independent auditor appointed by agreement of the parties.
 - g. That the Plaintiff/Applicant be allowed to deposit in Court and/or to the Landlord's account within 30 days from the date of such order, Kshs. 1,000,000/= pending the reconciliation of accounts in prayer (f) above and to continue paying due rents according to the lease executed by the parties herein.
 - h. That this Honourable Court be please (sic) to grant any such further orders as may be deemed just or appropriate and equitable.
 - i. That the costs of this application do abide the main suit.
4. The application is based on the grounds on its face and the supporting affidavit of Fredrick Ochieng Amayo the Plaintiff/Applicant's Director.
 5. The Defendant/Applicant's application dated 9th October, 2025 is expressed to be brought under Articles 25 (c), 48, 50 (1) & 159 (2)(b) & (c) of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rules 1(a) and Order 51 Rule 1 of the Civil Procedure Rules.
 6. The application seeks the following prayers;
 - a. Pending the hearing and determination of this application and the suit, the Honourable Court be pleased to issue an order of temporary injunction directed at the Respondents, whether by themselves or their servants or agents or otherwise howsoever, restraining them from remaining in the Main Hotel and Swimming Pool Area only erected on L.R. No. Kericho Municipality Block 4/313 situate within Kericho County.
 - b. Pending the hearing and determination of this application and the suit, the Honourable Court be pleased to issue a mandatory injunction compelling the Respondents, whether by themselves or their servants or agents or otherwise howsoever, to deliver vacant possession of the Main Hotel and Swimming Pool Area only erected on L.R. No. Kericho Municipality Block 4/313 situate within Kericho County.
 - c. In default to either of prayer (a) or (b) or both (a) and (b) above as the case may be, the Applicant be at liberty to use lawful means to obtain vacant possession of the suit premises.
 - d. Such further or other consequential orders as the Honourable Court may deem just.
 - e. Costs of this application be borne by the Respondents.



7. The application is based on the grounds on its face and the Supporting Affidavit of Musa Koech the Defendant/Applicant's Director sworn on 9th October, 2025.

Factual Background.

8. The Plaintiff commenced the present proceedings vide the Plaint dated 19th August, 2025 where it seeks the following prayers;
- a. A declaration that the lease agreement dated 1st August, 2025 remains valid and enforceable, and
 - b. A permanent order of injunction restraining the Defendant from terminating the lease.
 - c. And an order compelling the Defendant to account for rental income from third parties.
 - d. An order compelling the Defendant to settle the outstanding utility bills as previously agreed upon during the joint meeting.
 - e. Any further relief that the Honourable Court may deem fit.
 - f. Costs of this suit.
9. The Defendant filed a Statement of Defence and Counterclaim dated 21st September, 2025 where it seeks the following prayers;
- a. A declaration that the act of the 1st Defendant in the Counter-Claim subletting the main hotel and swimming pool area only erected on LR No. Kericho Municipality Block 4/313 situate within Kericho County to the 2nd Defendant in the Counter-Claim is illegal, null and void ab initio.
 - b. A declaration that the 2nd Defendant in the Counter-Claim, whether by itself or its servants or agents or otherwise howsoever, is wrongfully and/or illegally occupying the main hotel and swimming pool area only erected on LR No. Kericho/Municipality Block 4/313 situate within Kericho County and is accordingly a trespasser on the same.
 - c. An order of eviction directed at the Defendants in the Counter - Claim, whether by itself or its (sic) servants or agents or otherwise howsoever, from the Main Hotel and Swimming Pool Area only erected on L.R. No. Kericho Municipality Block 4/313 situate within Kericho County.
 - d. An order of permanent injunction directed at the Defendants in the Counter - Claim, whether by itself or its (sic) servants or agents or otherwise howsoever, restraining them from remaining in the Main Hotel and Swimming Pool Area only erected on L.R. No. Kericho Municipality Block 4/313 situate within Kericho County.
 - e. General damages for trespass against the 2nd Defendant in the Counter - Claim.
 - f. Judgment be entered jointly and severally against the 1st and 3rd Defendants in the Counter - Claim for rent arrears of KSh.3,900,000/=, plus interest thereon until payment in full.
 - g. Judgment be entered jointly and severally against the 1st and 3rd Defendants in the Counter - Claim for mesne profits at the rate of KSh.165,400/= per month from 25.8.2025 to 1.8.2026 and subsequently as tabled under clause 2.1 of the Lease Agreement dated 1.8.2023 until delivery of vacant possession, plus interest thereon until payment in full.



- h. Judgment be entered against the 2nd Defendant in the Counter - Claim for mesne profits at the rate of KSh.157,500/= per month from 12.2.2025 to 1.8.2025 and KSh.165,400 from 1.8.2025 and subsequently as tabled under clause 2.1 of the Lease Agreement dated 1.8.2023 until delivery of vacant possession, plus interest thereon and costs.
 - i. Interests on (f), (g), (h), (i), (j) and (k) above at commercial rates until payment in full.
 - j. Any such other or further relief as this Honourable Court may deem appropriate to be made.
10. The Plaintiff/Applicant's application dated 21st August, 2025 first came up for hearing on 25th August, 2025 when the Court directed that it be served upon the Defendant/Respondent.
 11. On 21st October, 2025, the application dated 21st August, 2025 came up for hearing when the Defendant/Respondent informed the Court that he had filed an application dated 9th October, 2025.
 12. The Court issued directions that the applications dated 21st August, 2025 and 9th October, 2025 be heard together and by way of written submissions.
 13. The matter was mentioned severally to confirm filing of submissions before the applications were reserved for ruling on 5th February, 2026.
The Plaintiff/Applicant's Contention in the application dated 21st August, 2025.
 14. The affidavit in support of the application is sworn by Fredrick Ochieng' Amayo the Plaintiff/Applicant's Director.
 15. He contends that on or about 1st August, 2023 he entered into a lease agreement with the Defendant/Respondent for the hotel premises located on land parcel No. Kericho/Municipality Block 4/313 for a period of twenty years.
 16. He also contends that one of the terms of the lease agreement was that he was to renovate the hotel to bring it to a functional state of operation. He goes on to state that the investment portion was capped at Kshs. 10,000,000.00
 17. He further contends that prior to the execution of the lease, the Defendant/Respondent failed to disclose that there were outstanding utility bills for water and electricity which led to the disconnection of these essential services.
 18. It is his contention that this non-disclosure materially affected his ability to utilize the leased property as intended and constituted a fundamental breach of the lease.
 19. It is also his contention that he held a joint meeting with the Defendant/Respondent and it was agreed that he would invest Kshs. 10,000,000.00 for restoration while the Defendant/Respondent would take responsibility for the outstanding water bills.
 20. It is further his contention that they also agreed to adjust the rent ratio to 60:40 in favour of the Plaintiff/Applicant for a period of five years to reflect the investment.
 21. He contends that despite the said agreement, the Defendant/Respondent has threatened to terminate the lease. He goes on to state that the Defendant/Respondent alleges that the outstanding rent is Kshs. 3,900,000/=.
 22. It is his contention that the Defendant/Respondent has engaged an auctioneer without any prior notice or opportunity for them to reconcile the disputed amounts.



23. He also contends that the Defendant/Respondent's purported termination notice treats the lease as a simple tenancy arrangement rather than a registered long-term lease thereby undermining the Plaintiff/Applicant's rights and protections under the lease and the applicable laws.
24. He further contends that the Defendant/Respondent failed to provide vacant possession of the entire property as it has rented out portions of it to third parties without his consent.
25. It is also his contention that the said third parties have trespassed on the said parcel of land by accessing and using the swimming pool that he manages thereby interfering with his business operations.
26. It is also his contention that he has made repeated attempts to engage the Defendant/Respondent through the property manager to resolve the issues amicably but it has refused to engage in meaningful dialogue.
27. It is further his contention that as a demonstration of good will, he is willing to deposit a sum of kshs. 1,000,000/= in Court pending the full reconciliation of the investment and rental accounts.
28. He contends that he has made the said offer to show his readiness to meet his lawful obligations and resolve the dispute amicably.
29. He also contends that if the purported termination is allowed to stand, the Plaintiff/Applicant will suffer irreparable loss including forfeiture of his investment, loss of business credibility and disruption of ongoing operations which losses cannot be adequately compensated by way of damages.
30. He ends his deposition by stating that the present suit raises issues that require determination by the Court.

The Defendant/Respondent's Response.

31. In response to the application, the Defendant/Respondent filed a Replying Affidavit sworn by Musa Koech its Director.
32. He deposes that the Defendant/Respondent is the owner of land parcel No. Kericho/Municipality Block 4/313 situated within Kericho County.
33. He also deposes that the Defendant/Respondent leased to the Plaintiff/Applicant the hotel and swimming pool constructed on the suit parcel of land for hotel, conferencing and entertainment purposes.
34. He further deposes that the Defendant/Respondent and the Plaintiff/Applicant executed a Deed of Indemnity on the same day they entered into the lease.
35. It is his deposition that the renovations that were to be carried out by the Plaintiff/Applicant were not an investment as they were to make the premises suitable to run the hotel business.
36. It is also his deposition that they did not agree to cap the renovations at Kshs. 10,000,000/= as alleged. He goes on to state that what was agreed was that the Plaintiff/Applicant was to repair the existing structures for a period of four months under Clause 4.1 of the lease agreement.
37. It is further his deposition that the Plaintiff/Applicant did not honor the said clause and it is therefore in breach of the lease agreement.
38. He deposes that the Defendant/Respondent paid Kshs. 419,900/= on behalf of the Plaintiff/Applicant on various dates as costs of electricity bills. He goes on to state the Plaintiff/Applicant has not refunded the Defendant/Respondent the said sums of money.



39. He also deposes that this is in response to paragraph 4 of the Affidavit in support of the application.
40. He further deposes that the Plaintiff/Applicant took possession of the premises on the suit parcel of land in April, 2023 which was before the lease was executed and it therefore had time to study and analyze the premises. He goes on to state that the lease was executed on 1st August, 2023.
41. It is his deposition that the Plaintiff/Applicant covenanted under Clause 5.7 of the lease to separate the sub meters for water and electricity. He goes on to state that the Plaintiff/Applicant has not done so.
42. It is also his deposition that the Plaintiff/Applicant is relying on unsubstantiated electricity and water bills to avoid paying rent despite the explicit terms of the lease agreement.
43. It is further his deposition that the Defendant/Respondent did not hold any meeting as alleged by the Plaintiff/Applicant at paragraph 5 of the Affidavit in support of the application.
44. He deposes that the alleged meeting, water and electricity bills are a smokescreen by the Plaintiff/Applicant to spur up a frivolous suit with no demonstrable cause of action.
45. He also deposes that the termination of the lease by the Defendant/Respondent was lawful and in accordance with the terms of the lease agreement. He goes on to state that the Plaintiff/Applicant breached the lease agreement and acted fraudulently after taking possession of the premises.
46. He further deposes that this is in response to paragraph 6 of the Affidavit in support of the application.
47. It is his deposition that the Plaintiff/Applicant did not comply with Clause 5.2 of the Lease which required it to pay Kshs. 300,000/= as two months' rent deposit.
48. It is also his deposition that the Plaintiff/Applicant has not paid rent since it took possession of the premises on the suit parcel of land.
49. It is further his deposition that the Plaintiff/Applicant has not paid rent for a period of twenty-five months (two years and one month). He goes on to state that at the time of termination of the lease, the rent arrears were at Kshs. 3,900,000/=.
50. He deposes that the Plaintiff/Applicant breached clause 1.2 of the lease by failing to quantify the cost of repairs and improvements so that the Defendant/Respondent could verify them.
51. He also deposes that the Plaintiff/Applicant illegally sublet the premises to Riccobello Company Limited without the consent of the Defendant/Respondent thereby contravening clause 5.22 of the lease agreement.
52. He further deposes that the Plaintiff/Applicant wrote a letter dated 12th February, 2025 addressed to the Defendant/Respondent contending that it had appointed Riccobello Company Limited to manage the hotel.
53. It is his deposition that the Plaintiff/Applicant wrote the said letter in order to illegally sublet the premises on the suit parcel of land.
54. It is also his deposition that Riccobello Company Limited is a distinct entity from the Plaintiff/Applicant.
55. It is further his deposition that Riccobello Company Limited is in possession of the premises and operates with Paybill No. 863554 and phone number 0759 545838 that are registered to Phylis Rono the sole director of Riccobello Company Limited.



56. He deposes that the Plaintiff/Applicant is guilty of fraudulently entering into the lease agreement and misrepresenting that it had the capacity to repair the premises and pay rent.
57. He also deposes that the Plaintiff/Applicant continues to derive benefit from the premises on the suit parcel of land from 1st August, 2023 to date while refusing to pay rent under the guise that it is repairing the premises.
58. He reiterates that the Plaintiff/Applicant has breached the lease agreement and has approached the Court with unclean hands and does not therefore deserve the orders it is seeking.
59. He further deposes that the Plaintiff/Applicant's actions has led to financial loss and inconvenience for the Defendant/Respondent.
60. It is his deposition that the Defendant/Respondent followed the law in terminating the lease as it wrote several letters to the Plaintiff/Applicant before serving on it the termination notice.
61. It is also his deposition that the said letters were delivered to Fredrick Amayo, the Plaintiff/Applicant's Director through his WhatsApp No. 0799 230 590 by Joseph Matingwony the Defendant/Respondent's Estate Manager. He goes on to state that in the circumstances, the termination was lawful and justified.
62. It is further his deposition that no addendum to the lease agreement was executed as alleged by the Plaintiff/Applicant.
63. He deposes that the Plaintiff/Applicant's proposal to deposit Kshs. 1,000,000/= is an admission of failure to pay rent.
64. He also deposes that the contentions about reconciliation of rent accounts is uncalled for and unjustified as the Plaintiff/Applicant has never paid rent.
65. He further deposes that the Plaintiff/Applicant has failed to keep and/or maintain proper records of repairs and improvements of the premises and it cannot therefore shift blame to the Defendant/Respondent.
66. It is his deposition that there is no prayer in the Plaint for taking of accounts or appointment of an independent auditor.
67. It is also his deposition that the payment of Kshs. 1,000,000/= by the Plaintiff/Applicant can only be part settlement of the rent arrears as particularized by the Defendant/Respondent in its Counterclaim.
68. It is further his deposition that the Defendant/Respondent used to run a hotel business on the premises on the suit parcel of land before it was leased to the Plaintiff/Applicant.
69. He deposes that the hotel was fully equipped with furniture and other outgoings which were placed under the care and custody of the Plaintiff/Applicant after it took possession of the premises.
70. He also deposes that from 5th to 6th January, 2025, the Defendant/Respondent took stock and noted that the following items were missing from the premises;
 - a. 39 beds valued at Kshs. 582,000/=.
 - b. 49 mattresses valued at Kshs. 424,000/=.
 - c. 86 chairs valued at Kshs. 258,000/=
 - d. 30 items in the swimming pool valued at Kshs. 160,500/=.



- e. Damage to the wiring at Tengecha House and Cottages Room 107 and 108 valued at Kshs. 240,000/=.
 - f. Damage to various items at the Main Hotel and cottages worth Kshs. 177,000/=
 - g. Electricity cables worth Kshs. 240,000/=
 - h. Kshs. 419,900/= in electricity bills under paragraph 5 hereinabove.
- Total- Kshs. 2, 501,400/=

71. He deposes that the Plaintiff/Applicant has come to Court with unclean hands and does not deserve the prayers sought.
72. He also deposes that the suit and the application under consideration are a gross abuse of the Court process and the Plaintiff/Applicant has no cause of action against the Defendant/Respondent.
73. He ends his deposition by stating that the Defendant/Respondent will suffer grave injury, loss and inconvenience as the Plaintiff/Applicant has not honored its obligations under the lease.
The Plaintiff/Applicant's Response to the Defendant/Respondent's Replying Affidavit
74. In response to the Defendant/Respondent's Replying Affidavit, the Plaintiff/Applicant filed a further Affidavit sworn on 3rd February, 2026.
75. He deposes that the deponent of the Defendant/Respondent's Replying Affidavit lacks the requisite locus standi to swear the affidavit as his status as the Defendant/Respondent's Director is under challenge.
76. He also deposes that the Defendant/Respondent acting through its shareholders has initiated formal proceedings for the removal of Musa Koech from office pursuant to Section 139 of the Companies Act.
77. He further deposes that on 1st May, 2024, the said Musa Koech was served with a formal removal letter stripping him the authority to represent and/or act for the Defendant/Respondent.
78. It is his deposition that there has been no board resolution and/or general meeting authorizing Musa Koech to institute the present proceedings or swear Court documents on behalf of the Defendant/Respondent.
79. It is also his deposition that the said Musa Koech attached to the Replying Affidavit an authority to swear where he has appointed and given himself authority to swear the Court documents. He goes on to state that the said Musa Koech has done so while being aware that the Defendant/Respondent is not singularly owned and/or controlled.
80. It is further his deposition that the reason for the removal of Musa Koech as a director of the Defendant/Respondent has been necessitated by the present lease which he intends to terminate at all costs.
81. He deposes that the Plaintiff/Applicant has made substantial capital investment on the premises which has transformed the premises into a high value hotel establishment thereby creating a significant equitable interest in the continued subsistence of the lease.
82. He also deposes that the said investments were undertaken with full knowledge and/or implied consent of the Defendant/Respondent which has resulted in the appreciation of the premises to a value that vastly surpasses the quantum of the alleged rent arrears.



83. He further deposes that the termination of the lease at this juncture would result in unjust enrichment on the part of the Defendant/Respondent who stands to re-enter a property which has been enhanced at the sole expense of the Plaintiff/Applicant without providing the requisite compensation for improvements and goodwill.
 84. It is his deposition that this is a dispute over a hotel business with a specialized venture whose marketability is tied to its location and continuous operation. He goes on to state that an eviction from the premises will cause irreparable harm and loss which cannot be adequately compensated by an award of damages and will effectively destroy the Plaintiff/Applicant's business.
 85. It is also his deposition that in light of the significant investment that is at stake, the Plaintiff/Applicant invokes the equitable jurisdiction of this Court for relief against forfeiture and it is prepared to abide by such terms on the liquidation of arrears as this Court may deem just.
 86. It is further his deposition that the balance of convenience tilts in favor of maintaining the status quo. He goes on to state that the Defendant/Respondent's interest can be secured by an order for payment while the Plaintiff/Applicant's interest is a multi-million investment that would be permanently extinguished by a premature termination.
 87. He deposes that the Plaintiff/Applicant's decision to hold the rent payments in abeyance is neither a willful default nor a breach of contract but a necessary precautionary measure necessitated by the discovery of crisis in the Defendant/Respondent's corporate governance and the questionable capacity of its directors.
 88. He also deposes that the Plaintiff/Applicant has invested heavily on the premises on the suit parcel of land and has been confronted with an imminent risk of a total failure of consideration.
 89. He further deposes that the validity of the lease agreement was placed in jeopardy by the internal disputes regarding the Defendant/Respondent's directorship and management.
 90. It is his deposition that the Plaintiff/Applicant reasonably apprehended that any further payments made to the disputed management would result in irrecoverable financial loss should the lease be subsequently declared ultra vires or void due to the Director's lack of capacity to bind the Defendant/Respondent.
 91. It is also his deposition that the suspension of payment of rent was a bona fide act of preservation aimed at ensuring that the Plaintiff/Applicant does not suffer double jeopardy by losing its substantial capital investment on one hand and losing rent to unauthorized persons on the other hand.
 92. It is further his deposition that the Plaintiff/Applicant is ready and willing to liquidate the outstanding rent arrears upon the Defendant/Respondent providing sufficient and legally binding proof of the Directors authority to receive the same and to guarantee the quiet enjoyment and validity of the term of the lease.
 93. He deposes that it would be an affront to the principles of equity for the Defendant/Respondent to benefit from its internal management dysfunction by seeking to terminate the lease for non-payment when the non-payment was directly occasioned by the Defendant/Respondent's own clouded capacity.
 94. He ends his deposition by urging the Court to allow the Plaintiff/Applicant's application.
- The Defendant/Applicant's Contention in its Notice of Motion application dated 9th October, 2025.



95. The affidavit in support of the application is sworn by Musa Koech the Defendant/Applicant's director.
96. He reiterates the averments in the Replying Affidavit sworn on 9th October, 2025 and contends that the 3rd Defendant/Respondent in the Counterclaim personally guaranteed to pay the rents and perform the terms of the lease and in default indemnify the Defendant/Applicant.
97. He also contends that the 3rd Defendant/Respondent in the Counterclaim has failed to indemnify the Defendant/Applicant after the Plaintiff/Respondent breached the lease agreement.
98. He reiterates the averments in the Replying Affidavit to the Plaintiff/Applicant's application and urges the Court to allow its application.
99. The Plaintiff/Respondent did not file a response to the Defendant/Applicant's application.

Issues for Determination.

100. The Plaintiff filed its submissions on 5th February, 2025 while the Defendant filed its submissions on 2nd February, 2025.
101. The Plaintiff reiterates its Director's averments in the Further Affidavit sworn on 3rd February, 2026 and while relying on the judicial decision of Spire Bank Limited vs Land Registrar & 2 Others [2019] KECA 530 (KLR) submits that the Court should strike out the Defendant's pleadings as they are fatally flawed.
102. It is the Plaintiff's submissions that the deponent of the Defendant's pleadings is a corporate interloper who is acting without a board resolution.
103. It is also the Plaintiff's submissions that the Defendant's claim for rent is undermined by a fundamental breach of the implied warranty of fitness of purpose.
104. It is further the Plaintiff's submissions that upon taking possession of the premises, it was confronted with a staggering inheritance of undisclosed utility arrears which were a latent liability that functioned as an embargo on the hotel's operations.
105. The Plaintiff submits that the Defendant delivered a commercial nullity.
106. The Plaintiff also submits that the deprivation of water and electricity was not a mere peripheral inconvenience as the intended use of the premises was for a hotel establishment and it therefore constituted a total frustration of the substratum of the lease.
107. The Plaintiff further submits that by the Defendant passing this liability to it, the Defendant breached the covenant for quiet enjoyment and the statutory obligations under the Land Act, 2012.
108. The Plaintiff relies on the judicial decision of Gachoka vs Intime Limited & another [2024] KEHC 16333 (KLR) and submits that it was entitled to hold rent in abeyance under the doctrine of equitable set off and divert those funds to mitigate the frustration and restore the premises to a tenable state.
109. It is the Plaintiff's submissions that to allow forfeiture would be to reward the Respondent's own reproachable conduct which will result in a manifest injustice.
110. The Plaintiff reiterates the averments in its affidavit in support of the application and submits that the Defendant seeks for a windfall of unjust enrichment by re-entering a property enhanced by its sweat.



111. The Plaintiff relies on the judicial decision of Kwanza Estates Limited vs Jomo Kenyatta University of Agriculture and Technology [2024] KESC 74 (KLR) and submits that while landlords may seek damages for breach, forcing an inequitable outcome where the tenant has significant stake is unconscionable.
112. It is the Plaintiff's submissions that if the injunction is denied, the hotel's marketability will be extinguished forever which is a loss that cannot be compensated by an award of damages.
113. The Plaintiff relies on the judicial decision of Shiloah Investment Limited vs Ouma t/a Nate 1 Café [2005] KEELC 5237 and urges the Court to allow its application as prayed.
114. The Defendant in its submissions reiterates its averments in the Replying Affidavit sworn on 9th October, 2025, the affidavit in support of the application sworn on an even date and then submits on the following issues;
 - a. Whether the Plaintiff has established any basis for issuance of the reliefs sought.
 - b. Whether a mandatory injunction can issue as sought by the Defendant.
 - c. Who should bear costs?
115. On the first issue, the Defendant relies on the judicial decision of Giella vs Cassman Brown [1973] EA 358 and submits that the Plaintiff has come to Court with unclean hands as it has not met its obligations to pay rent as provided for in the lease.
116. The Defendant also submits that since the Plaintiff filed the suit in August, 2025, it has not paid rent and the rent arrears are at kshs. 3,900,000/=.
117. The Defendant further submits that the Plaintiff continues to enjoy being in possession of the premises and has not demonstrated any reason for failure to pay rent.
118. It is the Defendant's submissions that the Plaintiff has attached an addendum to its pleadings and relies on it as the basis for failing to pay rent.
119. It is also the Defendant's submissions that the said addendum was not executed by the parties and its contents are unfounded and misplaced.
120. The Defendant relies on the judicial decisions of Samuel Kipkori Ngeno & another vs Local Authorities Pension Trust (Registered Trustees) & another [2013] KEHC 6825 (KLR), Kyangavo vs Kenya Commercial Bank Ltd & another [2004] KEHC 2658 (KLR) and submits that the Plaintiff is undeserving of the orders sought having failed to perform its principal obligation to pay rent and utility bills of the suit premises.
121. The Defendant reiterates its averments in its Replying Affidavit and submits that the Plaintiff is attempting to steal a march on it and use the orders of the Court to oppress it.
122. The Defendant relies on the judicial decision of Mobile Kitale Service Station vs Mobil Oil Kenya Limited & another [2004] eKLR in support of its submissions.
123. It is the Defendant's submissions that the balance of convenience tilts in its favour as it will be greatly prejudiced if the Court issues orders of injunction as it will be denied a chance to make use of the premises which are currently occupied by the Plaintiff who is not paying rent.
124. The Defendant relies on the judicial decision of Caltex Oil (Kenya) Ltd vs Evanson Njiiri Wanjihia [2009] eKLR and reiterates that the Plaintiff has not paid rent for a period of three years.



125. It is the Defendant's submissions that there is no prayer in the Plaintiff for taking of accounts and/or appointment of an auditor and therefore prayer (f) of the Plaintiff's application cannot issue in the absence of a substantive prayer in the main suit.
126. It is also the Defendant's submissions that applications are interlocutory in nature and are intended to facilitate the hearing and determination of a main suit.
127. It is further the Defendant's submissions that an application cannot therefore introduce a new cause of action or relief that is not claimed in the main suit.
128. The Defendant submits that if the Court allows the said relief, then it will be deprived of the opportunity to plead to that specific issue in its defence.
129. The Defendant also submits that the Plaintiff has not laid any basis for prayer (g) of its application.
130. The Defendant relies on Section 106B of the *Evidence Act* and submits that the Plaintiff has not filed a Certificate of Electronic Records to accompany the photographs attached.
131. It is the Defendant's submissions that the failure to attach the said certificate is not a technicality as it impeaches the credibility of the photographs sought to be produced.
132. The Defendant relies on the judicial decision of Republic vs Barisa Wayu Matuguda [2011] eKLR as was cited in William Odhiambo Oduol vs Independent Electoral & Boundaries Commission & 2 Others [2013] eKLR and Ogembo vs Yongo [2024] KEHC 15763 (KLR) in support of its submissions.
133. It is also the Defendant's submissions that the photographs marked as "Exhibit – FDA6" do not have an exhibit stamp and neither do they have a Commissioner for Oaths signature which clearly offends Rule 9 of the Oaths and Statutory Declarations Rules.
134. The Defendant relies on the judicial decision of Pharmacy and Poisons Board & another vs Mwiti & 21 Others [2021] eKLR and submits that the Plaintiff's application and the accompanying affidavit are devoid of evidence for determination by the Court.
135. The Defendant also submits that the Plaintiff cannot seek solace under Article 159 (2)(d) of *the Constitution* and relies on the judicial decision of Nicholas Kiptoo Arap Korir Salat vs The Independent Electoral and Boundaries Commission and 6 Others [2013] eKLR in support of its submissions.
136. On the second issue, the Defendant relies on the judicial decision of Kenya Breweries Ltd & Anor vs Washington Okeyo CA Civil Appeal No. 332 of 2000 (Nairobi) (Unreported) as was cited in Magnate Ventures Limited vs Eng. Kenya Limited [2009] KECA 442 (KLR) and reiterates that the Plaintiff has been in possession of its premises for a period of three years without paying rent.
137. It is the Defendant's submissions that given the said circumstances, a mandatory injunction should issue.
138. It is also the Defendant's submissions that the Court cannot come to the aid of the Plaintiff as the Plaintiff has not been performing its obligations under the lease.
139. The Defendant concludes its submissions by urging the Court to dismiss the Plaintiff's application and allow its application with costs.



Analysis and determination.

140. I have considered the Plaintiff and Defendant's applications, the Defendant's response and submissions and it is my view that the following issues arise for determination;
- a. Whether the application dated 19th August, 2025 has merit.
 - b. Whether the application dated 9th October, 2025 has merit.
 - c. Who should bear costs of the applications.

A. Whether the application dated 19th August, 2025 has merit.

141. Only prayers (c), (f) and (g) of the application dated 21st August, 2025 are for consideration.
142. Under prayer (c) of the application dated 21st August, 2025, the Plaintiff seeks that the Court issues an order restraining the Defendant from terminating the lease agreement dated 1st August, 2023.
143. Under prayer (f), the Plaintiff seeks an order requiring the Defendant to give an account of the rent due under the lease by crediting all the sums paid by the Plaintiff towards renovations and other agreed overheads. The Plaintiff also seeks that the Defendant files in Court the said accounts within thirty days.
144. Under prayer (g), the Plaintiff seeks to be allowed to deposit in Court Kshs. 1,000,000/= pending reconciliation of accounts and for it to continue paying rents as per the lease executed by the parties.
145. The Plaintiff contends that it entered into a lease agreement with the Defendant for the premises situated on land parcel No. Kericho Municipality Block 4/313.
146. The Plaintiff also contends that the lease entered into by the parties was for a term of twenty years from 1st August, 2023.
147. The Plaintiff further contends that it was agreed that it would renovate the premises and the expenses credited to the rent account since the premises were dilapidated.
148. It is the Plaintiff's contention that after taking possession, it discovered that there were outstanding bills for water and electricity which led to the disconnection of the said services.
149. It is also the Plaintiff's contention that it had a subsequent meeting with the Defendant where it was agreed that the Plaintiff would invest up to 10,000,000/= and the rent be adjusted to a ratio of 60:40 for a period of five years.
150. It is also the Plaintiff's contention that despite making the said agreement, the Defendant threatened to terminate the lease and levy distress for rent.
151. It is further the Plaintiff's contention that on 24th July, 2025, it received a lease termination notice from the Defendant.
152. The Plaintiff contends that the said termination notice is in breach of the lease agreement and is unlawful.
153. The Plaintiff also contends that it is willing to deposit a sum of Kshs. 1,000,000/= in Court pending full reconciliation of the investment and rental accounts.
154. The Defendant on the other hand contends that since the Plaintiff took possession of the premises on the suit parcel of land, it has not paid rent thereby breaching the lease agreement.



155. The Defendant also contends that the Plaintiff's proposal to deposit Kshs. 1,000,000/= in Court is an admission that it has not paid rent.
156. The Defendant denies that the intended renovations were capped at Kshs. 10,000,000/= and contends that the lease provided that the renovations be done within a period of four months.
157. The Defendant also denies that it had a subsequent meeting with the Plaintiff as alleged and contends that the Plaintiff failed to quantify the cost of repairs and improvements for it (Defendant) to verify the costs of repair.
158. The Defendant further contends that the Plaintiff has breached the lease agreement by subletting the premises to the 2nd Defendant in the Counterclaim without its consent.
159. It is the Defendant's contention that that is why it terminated the lease.
160. It is also the Defendant's contention that the Court cannot grant prayer (f) of the application dated 21st August, 2025 in the absence of a substantive prayer in the main suit.
161. As stated, under prayer (c) of the application under consideration, the Plaintiff seeks that the Court issues an order restraining the Defendant from terminating the lease pending the hearing and determination of the suit.
162. It is important to note that the Plaintiff admits to receiving a Notice to terminate the lease which Notice to Terminate the Defendant contends to have validly issued.
163. It is pertinent to point out that under prayer (a) of the Plaintiff, the Plaintiff seeks for a declaration that the lease agreement dated 1st August, 2025 is valid and enforceable.
164. Under prayer (b) of the Plaintiff, the Plaintiff seeks for a permanent order of injunction to restrain the Defendant from terminating the lease.
165. As it stands, there is a Notice of termination of the lease that has been served upon the Plaintiff. It is my view that its validity or otherwise is an issue for determination during the hearing and determination of the main suit.
166. Under prayer (f) of the application dated 21st August, 2025, the Plaintiff seeks that the Defendant renders a true account of the rent due under the lease by crediting all the sums paid by the Plaintiff towards renovations and other agreed overheads. The Plaintiff also seeks that the said accounts be filed in Court within thirty days.
167. The Defendant on the other hand contends that the Plaintiff breached clause 1.2 of the lease by failing to quantify the cost of repairs and improvements for it (Defendant) to verify the costs of such repairs.
168. The Defendant also contends that the said prayer cannot be granted in the absence of a substantive prayer in the main suit.
169. The Plaintiff has attached a copy of the lease dated 1st August, 2023 to its affidavit in support of the application. Clause 1 of the said lease is on Repairs and improvements. Clause 1.1 and 1.2 provides as follows;

- “ 1. The premises are currently dilapidated and in dire need of rehabilitation. The tenant shall carry out these (sic) as listed in a separate document with the Estate Manager. (Herein after called the “Manager”).



2. The said list shall be quantified and costed by the Tenant in collaboration with the Manager to verify the costs appurtenant thereto. Any such costs agreed upon shall be credited to the rent account.”
170. It is evident from the lease agreement that it was the Plaintiff who was to collaborate with the Estate Manager to verify the rehabilitation costs which costs would have then be credited to the rent account.
 171. The Court of Appeal in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KECA 362 (KLR) held as follows;

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
 172. It is my view that the Plaintiff is calling upon the Court to re-write the terms of the lease agreement by seeking that the Defendant renders an account of the rent due and credit the sums paid for renovations.
 173. I decline to grant this prayer.
 174. Under prayer (g) of the application dated 21st August, 2025, the Plaintiff seeks for an order directing it to deposit in Court and/or the Landlord’s account Kshs. 1,000,000/= within thirty days pending reconciliation of accounts under prayer (f) of the application.
 175. It is worth emphasizing that the prayer for an order to pay the Kshs. 1,000,000/= is predicated on the Court issuing prayer (f) which prayer I have declined to grant.
 176. It follows that I also decline to grant an order directing the Plaintiff to deposit in Court and/or the Landlord’s account Kshs. 1,000,000/= within thirty days pending reconciliation of accounts.
 177. The Plaintiff also seeks under prayer (g) that it continues to pay rent according to the lease executed by the parties herein.
 178. In the judicial decision of *Kang’ethe & Company Advocates v Nathe Holding Limited* [2025] KEELC 7404 (KLR) the Court held that a tenant has a duty to pay rent.
 179. It is my view that it would not be necessary for this Court to issue an order for payment of rent and yet the parties have executed a lease agreement that has set out their respective obligations.
 180. From the foregoing, it is evident that the application dated 21st August, 2025 lacks merit.

B. Whether the application dated 9th October, 2025 has merit.

181. Under prayer (a) of the application dated 9th October, 2025, the Defendant seeks an order of temporary injunction to restrain the Plaintiff and the 2nd and 3rd Defendants in the Counterclaim from remaining in the Main Hotel and the swimming pool located on land parcel No. Kericho Municipality Block 4/313.
182. Under prayer (b), the Defendant seeks a mandatory injunction compelling the Respondents to deliver vacant possession of the Main Hotel and Swimming Pool Area on land parcel No. Kericho Municipality Block 4/313.



183. In the judicial decision of *Maher Unissa Karim v Edward Oluoch Odumbe* [2015] KEHC 4029 (KLR) the Court held as follows;

“The test for granting a mandatory injunction is different from that enunciated in the *Giella v Cassman Brown* case which is the locus classicus case of prohibitory injunctions. The threshold in mandatory (sic) is higher than the case of prohibitory injunction and the Court of appeal in the case of “Kenya Breweries Ltd v Washington Okeyo (2002) EA 109” had occasion to discuss and consider the principles that govern the grant of mandatory injunction was correctly stated in volume 24 Halsbury Laws of England 4th Edition paragraph 948 which states as follows;

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the Court thinks it ought to be decided at once or if the act done is simple and a summary one which can be easily remedied, or if the Defendant attempts to steal a march on the Plaintiff, a mandatory injunction will be granted on an interlocutory application.” (Emphasis mine)

184. A mandatory injunction is issued in exceptional circumstances and it amounts to making a conclusive determination on an issue without parties being given an opportunity to be heard.
185. The Defendant contends that the Plaintiff has failed to pay rent thereby breaching the lease agreement entered into by the parties.
186. The Defendant also contends that on 24th July, 2025, it issued a Notice to Terminate to the Plaintiff and the notice period stated therein has expired.
187. The Defendant therefore prays that the prayers sought in its application be granted.
188. The Plaintiff did not submit on the prayers sought in the application dated 9th October, 2025.
189. It is important to note that under issue (a) above, I have found that the issue whether or not the lease was terminated or should be terminated by the Defendant will be best addressed during the hearing and determination of the main suit.
190. In simple terms, in the application dated 9th October, 2025, the Defendant is seeking an order of vacant possession of the premises constructed on the suit parcel of land.
191. Put differently, the temporary injunction sought under prayer (a) of the application is essentially similar to the mandatory injunction sought under prayer (b) as they both seek that the Plaintiff delivers vacant possession of the hotel and swimming pool located on the suit parcel of land.
192. It is important to note that under prayer (c) of the Counter Claim, the Defendant is seeking that an order of eviction be issued against the Plaintiff and the 2nd and 3rd Defendants in the Counterclaim to vacate the main hotel and swimming pool located on land parcel No. Kericho/Municipality Block 4/313.
193. It is therefore my view that prayers (a) and (b) of the application dated 9th October, 2025 have the effect of determining the Counterclaim at the interlocutory stage.
194. It is also my view that the issue of whether or not the Plaintiff should give vacant possession of the premises will be best addressed during the hearing and determination of the main suit.
195. That being the case, I find that the application dated 9th October, 2025 lacks merit.



196. Before penning off, I note that the Plaintiff has extensively submitted on the locus standi of Musa Koech to swear the Replying Affidavit and the affidavit in support of the application dated 9th October, 2025.
197. The Plaintiff contends that there is no board resolution and/or general meeting authorizing Musa Koech to swear Court documents on behalf of the Defendant.
198. The Plaintiff also contends that the Defendant's shareholders have initiated formal proceedings for the removal of Musa Koech as a director.
199. The Defendant did not submit on this issue.
200. A perusal of the Court record shows that the Defendant attached to its Replying Affidavit a Letter of Authority dated 24th September, 2025 authorizing Musa Koech to swear affidavits and other relevant documents to be filed in the present suit. The Letter of Authority is signed by a Director whose name is not stated.
201. The Plaintiff contends that the said letter of authority was signed by Musa Koech and that he did not take into consideration the other directors of the Defendant.
202. In the judicial decision of *SIokwei Tarita Ltd V Dr. Charles Walekwa* [2012] KEHC 305 (KLR) the Court held as follows;

“It is trite law, and I need not elaborate, that a company is a separate entity from its members and that it has a legal personality of its own. It can sue and be sued in its own name. Matters relating to suits, especially whether to commence or whether to defend a suit, are matters that are principally covered in the Articles of Association of a company.”

203. In the judicial decision of *Ochanda v EON Energy Limited* [2025] KEHC 7964 (KLR) the Court held as follows;

“27. It is not for this Court to speculate whether or not the requisite authority has been obtained from the Respondent herein. The assumption should be that the claim has been duly authorized by the Respondent and the Court can be put into inquiry if the Respondent or an authorized agent puts material before the Court that the Verifying Affidavit has not been duly authorized. This is because authority to institute or defend the suit is an internal matter of the company emanating from its Articles of Association.

28. The appropriate officer authorized to swear an affidavit on behalf of a company is known internally to the Company under its Articles of Association. To state that an affidavit by a corporation is not properly sworn by a person who is not authorized by the Articles of Association of the company is a matter that touches on a violation of the Articles of Association.

29. In any event, the Affidavit sworn has been sworn by a director of the Respondent's company. Pursuant to the principles of company law, a director is a known agent of the company. It is within the ostensible authority of the directors to sign documents on behalf of a company including affidavits unless evidence is given that the Respondent acted outside the scope of his actual



authority. I cannot hold that he was unauthorized to swear the affidavit on behalf of the Respondent.” (Emphasis mine)

204. In the above cited judicial decisions, the Court held that the issue whether or not to defend a suit is a matter principally covered by the Articles of Association of a company. The Court also held that the appropriate officer authorized to swear an affidavit on behalf of a company is known internally to the Company under its Articles of Association, the Court also observed that a director is an agent of the company and that it is within the ostensible authority of a director to sign documents on behalf of a company including affidavits. Therefore, evidence has to be tendered to prove that a director has acted outside the scope of his actual authority before a Court can find that such director is unauthorized.
205. The Plaintiff has attached to its Further Affidavit, letters that allege that Musa Koech has been temporarily relieved off his duties as a Director of the Defendant. The said letters are dated 1st May, 2024.
206. It is my view that the evidentiary import of the said letters cannot be interrogated at this stage of the proceedings. It is also not for this Court to make a determination on whether or not the said Musa Koech was relieved off his duties as the director of the Defendant. The Defendant must be aware of its options under the law if it is indeed true that this suit is being defended and a counterclaim has been filed by a person who lacks authority to act on its behalf.
207. That is all I will state on this issue.

C. Who should bear costs of the applications.

208. The general rule is that costs shall follow the event in accordance with the Provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

209. Taking the foregoing into consideration, I find that the applications dated 21st August, 2025 and 9th October, 2025 lack merit and are hereby dismissed with costs.
210. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 16TH DAY OF APRIL, 2026.

L. A. OMOLLO

JUDGE.

In the presence of: -

The firm of Nyagaka & Onduso for the plaintiff – Absent.

Mr. Midega for the Defendant.

Court Assistant; Mr. Joseph Makori.

