



Masava Limited & another v Middle East Bank Kenya Limited & another (Civil Suit E597 of 2025) [2026] KEHC 4825 (KLR) (Commercial and Tax) (9 April 2026) (Ruling)

Neutral citation: [2026] KEHC 4825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E597 OF 2025**

MA OTIENO, J

APRIL 9, 2026

BETWEEN

MASAVA LIMITED 1ST PLAINTIFF

ISAAC ABDULLAHI IBRAHIM 2ND PLAINTIFF

AND

MIDDLE EAST BANK KENYA LIMITED 1ST DEFENDANT

GARAM INVESTMENTS AUCTIONEERS 2ND DEFENDANT

RULING

1. Before the Court for determination is the Plaintiffs' Notice of Motion dated 7th October 2025, brought under Sections 1A, 1B, 3A, 63(e) & 95 of the *Civil Procedure Act* and Order 40 Rules 1 & 2 and Order 50 Rule 6 of the Civil Procedure Rules.
2. The application is supported by the affidavit sworn by the 2nd Plaintiff on the same date.
3. The Defendants opposed the application through the Replying Affidavit sworn on 15 October 2025 by Elizabeth Ong'are, the legal manager of the 1st Defendant. The 2nd Defendant, on its part, filed Grounds of Opposition dated 30 October 2025.
4. Briefly, the Plaintiffs obtained loan facilities totalling approximately Kshs. 250,000,000 from the 1st Defendant, secured by three charged properties, with the 2nd Plaintiff as guarantor. Upon default, the 1st Defendant commenced the process of exercising its statutory power of sale over the securities, prompting the Plaintiffs to seek interim injunctive relief from this Court.



5. On 16 September 2025, the Court granted an interim injunction restraining the intended sale. On 25 September 2025, the order of injunction was extended on condition that the Plaintiffs deposit Kshs. 50,000,000 into Court within fourteen (14) days.
6. The Plaintiffs did not deposit the said amount. Instead, they asserted that Kshs. 55,940,000 – being proceeds from the sale of five apartments allocated to the 1st Plaintiff – had been deposited into an account held by Taneem Properties Limited at the 1st Defendant Bank.
7. According to the Plaintiffs, the account held by Taneem Properties Limited was an escrow account holding funds in trust for Masava Limited, the 1st Plaintiff herein. On this basis, the Plaintiffs instructed Taneem to release Kshs. 50,000,000 toward compliance with the Court’s order. Taneem issued corresponding instructions to the 1st Defendant on 1 October 2025.
8. The 1st Defendant, however, declined to release any funds, contending that no funds were available, as all monies received had been appropriated toward Taneem’s own indebtedness. The Bank also denied the existence of any escrow arrangement in favour of the Plaintiffs.
9. The present application therefore seeks the following orders:
 - i. Enlargement of time to deposit the Kshs. 50,000,000; and
 - ii. A mandatory order compelling the 1st Defendant to release and deposit the alleged escrow funds into Court as security.
10. The Defendants oppose the application. The 1st Defendant argues that no escrow funds exist to the Plaintiffs’ credit and further notes that Taneem Properties Limited, the account holder, is not a party to this suit. It is further the Defendants’ contention that mandatory injunctions cannot issue in the face of contested facts. The 2nd Defendant maintained that the Court is functus officio and cannot revisit its earlier conditional injunction.
11. The Defendants accordingly pray that the application be dismissed with costs for being frivolous and an abuse of the court process.
12. The application was canvassed by way of written submissions. The Plaintiff’s submissions dated 5 November 2025 were filed by Issa & Company Advocates. The 1st Defendant’s submissions dated 20 November 2025 were filed by their Counsel, Mokaya & Onyabu Advocates, while Esmail & Esmail Advocates filed submissions dated 19 December 2025, on behalf of the 2nd Defendant.

Analysis and Determination

13. The single issue for determination is whether time should be enlarged for the Plaintiffs to deposit the required security, and whether the Court should compel the 1st Defendant to deposit Kshs. 50,000,000 allegedly held in an escrow account.
14. Order 50 Rule 6 of the Civil Procedure Rules grants the Court discretion to enlarge time, providing:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such



enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

15. The discretion under this provision is wide but must be exercised judiciously and upon satisfactory explanation for the non-compliance. As the Supreme Court held in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR:

“Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis..”

16. In the present case, the Court imposed a clear and unambiguous condition on 25 September 2025: deposit Kshs. 50,000,000 within fourteen days. The Plaintiffs have not complied.

17. The Plaintiffs’ attempt to rely on funds allegedly held in an escrow account in the name of Taneem Properties Limited raises two significant challenges. First, there is a stark factual dispute regarding account No. 1003028001094. While the Plaintiffs claim it is an escrow account holding funds in trust, the 1st Defendant maintains it is an ordinary account securing Taneem’s facilities. Such a dispute cannot be resolved on affidavit evidence and requires a full trial.

18. Given that the ownership and application of the funds in question are disputed, the Court cannot at this stage, grant a mandatory interlocutory order directing the Bank to release or deposit funds. Doing so would determine substantive rights prematurely. In *Kenya Breweries Ltd & Another v Washington O. Okeyo* [2002] eKLR, the Court of Appeal held:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases...”

19. Second, and more fundamental, is the fact that while the Plaintiffs asserted the existence of an escrow account in Taneem’s name holding funds in trust for them, no escrow agreement was produced. Evidence on record reveals that the account belongs solely to Taneem Properties Limited, an entity not a party to these proceedings.

20. The law is settled that courts cannot make orders adversely affecting persons who are not parties. In *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55, the Court held that no order can be issued against a non-party.

21. In this case, Taneem Properties Limited, which is central to the dispute regarding the ownership and application of the alleged funds, has not been joined to the present proceedings. Granting the orders sought would therefore prejudice a non-party without affording it a hearing, which would offend the rules of natural justice.



22. The Court of Appeal in *M'imwenda & another v Mire* [2024] KECA 1257 (KLR) upheld the principle on the right to be heard, stating as follows:

“By parity of reasoning, we find that as the applicant is a person who is likely to be affected by the outcome of the appeal, she therefore has a right to be heard as dictated by the rules of natural justice.”

23. For the reasons set out above, the Court finds the application to be without merit. The same is hereby dismissed. Consequently, the Court issues the following final orders:

- i. The prayer to compel the 1st Defendant Bank to deposit Kshs. 50,000,000.00 from the alleged escrow account is hereby declined.
- ii. However, in the interest of justice and to allow the Plaintiffs a final opportunity to secure their properties, and in the exercise of the Court's jurisdiction, I hereby extend the time to deposit the Kshs. 50,000,000.00 by a further seven (7) days from the date of this ruling.
- iii. Failure to deposit the said sum within the seven (7) days will result in the automatic lapse of the interim injunction, allowing the Defendants to proceed with the recovery process.
- iv. Costs of this application are hereby awarded to the Defendants.

24. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 9TH DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADOJUDGE OF THE HIGH COURT

In the presence of: -

C/A – Moses

Ms. Maina h/b for Issa..... for the Applicant/Plaintiffs

Onyambu.....for 1st Defendants

Esmael.....for the 2nd Defendant

