



**Abdu v Elmi & 4 others (Commercial Case E460 of 2024)
[2026] KEHC 4081 (KLR) (Commercial and Tax) (13 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E460 OF 2024**

MN MWANGI, J

MARCH 13, 2026

BETWEEN

OLAD ABDIHALIQ ABDU PLAINTIFF

AND

MOHAMED HASSAN ELM I 1ST DEFENDANT

ABDULLAHI ALI 2ND DEFENDANT

ABDALLAH MOHAMMED AHMED 3RD DEFENDANT

IN NYARIBO & COMPANY ADVOCATES 4TH DEFENDANT

MAALIN GROUP 5TH DEFENDANT

RULING

1. The 5th defendant/applicant filed a Notice of Motion application dated 18th October 2024 pursuant to the provisions of Section 52 of the *Advocates Act*, Order 40 Rule 1, Order 51 Rule 1 & Order 52 Rule 4 of the Civil Procedure Rules, 2010, Sections 3, 3A & 63(c) of the *Civil Procedure Act* and all the enabling provisions of the law. The 5th defendant prays for an order that the sum of Kshs. 12,500,000/=, owed to it pursuant to the Client Instruction Letter and Fee Agreement dated 8th December, 2020, be deposited into a joint interest-earning account in the names of all the parties' Advocates, pending the hearing and determination of the main suit.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Ishmael Nyaribo, an Advocate of the High Court of Kenya and learned Counsel for the applicant. Mr. Nyaribo averred that the respondents sought his legal advice and representation in relation to the restructuring of Maalin Group, the 4th defendant, culminating in a Memorandum of Restructuring dated 8th December 2020, duly executed by all relevant parties,



including the plaintiff. That thereafter, certain collateral documents, including the subject Title documents, were deposited with his firm by mutual agreement.

3. He deposed that the 5th defendant is entitled to retain the said documents under a lien pending payment of agreed legal fees amounting to Kshs.12,500,000/=, as provided in the Client Instruction Letter and Fee Agreement dated 8th December 2020, which the respondents have allegedly failed and/or refused to settle despite demand. Mr. Nyaribo stated that the existence of the executed Fee Agreement is undisputed, that he has been innocently drawn into a dispute among the respondents and that he has a prima facie case with a high likelihood of success. He contended that no prejudice will be occasioned to any party in the event that the instant application is allowed. He affirmed his professional duty and capacity as an Advocate to retain the Title documents lawfully under a lien, until legal fees are paid and the suit is determined.
4. In opposition to the 5th defendant's application, the 1st defendant filed a replying affidavit sworn on 7th January 2025 by Mr. Mohamed Hassan Elmi, the 1st defendant herein. Mr. Elmi acknowledged that he delivered fourteen (14) Title documents to the 5th defendant to hold in trust in anticipation of a business venture with the 3rd defendant, which ultimately did not materialize, a fact that he stated is admitted by the 5th defendant. He averred that the Agreement was clear that the Titles were to be released to him upon his instructions as the lawful owner, as evidenced by a Document/Property Delivery Acknowledgement Form dated 8th December 2020. Mr. Elmi denied ever signing any Agreement relating to payment of legal fees for the safekeeping of the Titles and contended that the said Titles came into the 5th defendant's possession solely in connection with the Maalin Memorandum Agreement, for which the 5th defendant was paid his fees.
5. Mr. Elmi claimed that his signature was forged on the purported Fee Agreement, relying on a Forensic Document Examination Report dated 24th July 2024. He asserted that the alleged fees were to be borne by all parties to the Restructuring Agreement and faulted the 5th defendant for selectively demanding the entire amount from him while not pursuing the other parties. He accused the 5th defendant of colluding with the 3rd defendant and the plaintiff to unlawfully retain his Titles, citing correspondence exchanged between the 5th defendant and his Advocates as evidence of bad faith and an intention to frustrate him and unlawfully deprive him of his property. He maintained that the instant application was brought in bad faith, is vexatious and frivolous, and that he stands to suffer loss of his lawful property if the orders sought herein are granted. He urged this Court, in the interest of justice, to order the 5th defendant to surrender the suit Titles to him and to dismiss the application herein with costs.
6. In a rejoinder, the 5th defendant filed a supplementary affidavit sworn on 28th March 2025 by Mr. Ishmael Nyaribo, an Advocate of the High Court of Kenya and learned Counsel for the applicant. Mr. Nyaribo averred that the 1st defendant admitted having entered into an Agreement, before him, with the 3rd defendant for settlement of disputes, which was signed by the 4th defendant, and that release of the subject documents was to follow a set protocol in accordance with that Agreement. He further averred that the 1st defendant through the Maalin Agreement, duly instructed the 5th defendant and executed a Fees Agreement as a client, and cannot therefore allege that the legal services rendered were gratuitous. He dismissed the allegations of forgery and prior payment of legal fees as unfounded and feigned.
7. Mr. Nyaribo contended that the respondents acknowledged owing the 5th defendant legal fees, but merely disagreed on the mode of payment or settlement. He further deposed that the subject matter involved claims worth Kshs.60,000,000,000/=, which would ordinarily attract legal fees in the region of Kshs.700,000,000/=, but that the 5th defendant agreed to a reduced and negotiated fee of Kshs.12,500,000/= limited to its role in compensating customers under the memorandum



- of understanding. He expressed willingness to have his bill taxed provided that the respondents deposit the sum of Kshs.12,500,000/= in Court as security. He asserted that since this Court is not a Taxing Master, the appropriate order would be to compel the respondents to honour their Fee Agreement before resolving their internal disputes. Mr. Nyaribo maintained that the application herein is meritorious and intended to secure the 5th defendant's fees while the parties resolve their differences.
8. The application herein was canvassed by way of written submissions. The 5th defendant's submissions were filed on 28th March 2025 by the law firm of I.N. Nyaribo & Company Advocates, whereas the 1st defendant's submissions were filed on 9th July 2025 by the law firm of Iqra Bare & Company Advocates. On 2nd October 2025, Ms. Rono, learned Counsel for the plaintiff, indicated that the plaintiff was not opposed to the 5th defendant's application dated 18th October 2024.
 9. Mr. Nyaribo, learned Counsel for the 5th defendant relied on the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, and submitted that the 5th defendant had established a prima facie case with a probability of success. He contended that the duly executed Client Instruction Letter and Fee Agreement dated 8th December 2020 provided a clear contractual foundation for the 5th defendant's claim for legal fees, which indebtedness had not been expressly denied by the respondents. On the issue of lien, Counsel submitted that under common law an Advocate is entitled to retain a client's property or funds pending payment of outstanding legal fees. He argued that the 5th defendant is lawfully entitled to retain the Title documents until settlement of his fees.
 10. Mr. Nyaribo submitted that the respondents' failure to settle the agreed fees raises legitimate concern as to their ability or willingness to pay if the Titles are released. He cited the Court of Appeal case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] KECA 945 (KLR), where the Court of Appeal affirmed the discretion to preserve funds where there is risk of dissipation.
 11. In conclusion, Counsel invoked the provisions of Sections 1A & 1B of the *Civil Procedure Act* on the just, expeditious and proportionate resolution of disputes. In urging this Court to grant the orders being sought in the application herein to safeguard the 5th defendant's claim pending the determination of the suit, Mr. Nyaribo cited the case of *Githunguri Dairy Farmers Co-operative Society Ltd v Attorney General & 2 others* [2016] KEHC 7104 (KLR).
 12. Ms Amonde, learned Counsel for the 1st defendant submitted that the 1st defendant entered into an Agreement dated 25th March 2021 with Maalin Group Ltd, whose sole Shareholder at the time was the 3rd defendant and that both parties appointed the 5th defendant to draft the Agreement. She contended that the 5th defendant received his legal fees for drafting the said Agreement, a fact not disputed, and that it did not enter into any separate Agreement to pay for the safekeeping of the Titles, as their surrender was solely for purposes of securing the raising of shares under the Agreement. Counsel maintained that the 1st defendant's signature on the alleged Client Instruction Letter and Fee Agreement dated 8th December 2020 was forged.
 13. Ms Amonde cited the case of *R.G Patel v Lalji Makanji* [1957] EA 314, and submitted that the 1st defendant has discharged his burden and demonstrated that he never signed the impugned Fee Agreement. She argued that the instant application is an afterthought, brought in bad faith after the 1st defendant filed his own application seeking, inter alia, orders compelling the 5th defendant to deposit the subject Titles in Court. She urged this Court to dismiss the 5th defendant's application.



Analysis And Determination.

14. I have considered the application herein, and the affidavits filed in support thereof. I have also considered the replying affidavit by the 1st defendant and the written submissions by Counsel for the parties. The issue that arises for determination is whether the 5th defendant has satisfied the threshold for being granted an order directing that the sum of Kshs.12,500,000/= be deposited in a joint interest-earning account or in Court, pending the hearing and determination of the main suit.
15. The 5th defendant's case is that under the Client Instruction Letter and Fee Agreement dated 8th December 2020, duly executed by the parties herein, it is entitled to legal fees in the sum of Kshs.12,500,000/=. For this reason, the 5th defendant asserted a right of lien over the subject Title documents which were deposited with its firm by mutual agreement pursuant to the Memorandum of Restructuring dated 8th December 2020, executed by all relevant parties including the plaintiff herein, pending settlement of the said legal fees.
16. This being an application wherein an interlocutory relief is being sought, this Court is to be guided by the principles laid down by the Court in the case of *Giella v Cassman Brown & Company Limited* (supra), where the Court held that -

Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.
17. It is not disputed that the 1st defendant delivered fourteen (14) Title documents to the 5th defendant in the context of a restructuring arrangement involving the 3rd and 4th defendants. It is also not in contest that the 5th defendant rendered certain legal services relating to the restructuring process. The existence and validity of the Client Instruction Letter and Fee Agreement dated 8th December 2020 is however seriously disputed. The 1st defendant has expressly denied executing the said Fees Agreement and has gone further to allege forgery of his signature. He relies on a Forensic Document Examination Report dated 24th July 2024 to assert the said allegation.
18. It is now well settled that allegations of fraud, including forgery, must be strictly proved. It is however noteworthy that at this interlocutory stage, this Court is not called upon to make definitive findings on the authenticity of the disputed signatures, as that is a matter best reserved for trial, upon production of original documents, and the hearing of viva voce evidence from experts. In the case of *Mbuthia v Jimba Credit Corporation Ltd* [1988] KLR 1, the Court held as follows-

In an application for interlocutory injunction, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.
19. The serious and substantive challenge mounted against the very foundation of the 5th defendant's claim, being the Fee Agreement, raises triable issues that cannot be summarily resolved in the 5th defendant's favour at this juncture, without the dispute being canvassed in full trial.
20. The 5th defendant has urged this Court to order the deposit of Kshs.12,500,000/=: in a joint interest earning account or in Court, to secure its fees and forestall any potential dissipation. The applicant has claimed that the said amount is the legal fees allegedly due under the Client Instruction Letter and



Fee Agreement dated 8th December 2020. Although this Court recognizes that it possesses discretion to order the preservation of disputed sums in appropriate circumstances, such discretion must be exercised cautiously and only upon clear demonstration of a legal entitlement and a real risk of injustice.

21. The record shows that in this case, the 5th defendant does not seek preservation of an admitted debt but rather deposit of a sum that is fundamentally disputed. The 1st defendant in its replying affidavit denied liability altogether and challenged the validity of the very Agreement, giving rise to the claim. In the circumstances, to compel deposit of the entire sum of Kshs.12,500,000/= at this stage would in effect, amount to granting a substantive portion of the relief sought in the main dispute before the issues surrounding the alleged Fee Agreement are interrogated and determined at trial.
22. Further, while an Advocate's lien over client property for unpaid fees is recognized in law, such lien presupposes the existence of fees lawfully due and payable. Where the retainer and the Fee Agreement are themselves in serious contention, the Court must proceed with caution. The appropriate forum for the determination of Advocate-client fees, where disputed, remains the taxation process under the Advocates Act, unless parties agree otherwise.
23. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR), defined what constitutes a prima facie case as follows -

So, what is a prima facie case" I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.

24. In the circumstances of this case, this Court is not persuaded that the 5th defendant has demonstrated a prima facie case with a probability of success in respect of the specific order being sought for deposit of Kshs.12,500,000/=, in an interest earning joint account or in Court, being the legal fees allegedly due under the Client Instruction Letter and Fee Agreement dated 8th December 2020.
25. On the issue of damages, it is not in contest that the 5th defendant's claim is for payment of Kshs.12,500,000/=, being the legal fees allegedly due under the Client Instruction Letter and Fee Agreement dated 8th December 2020. This is a liquidated claim and it has not been shown that the respondents are people with no means of paying the said sum to the 5th defendant, if at all it is proved and/or demonstrated that the 5th defendant is entitled to the said sum. This Court finds that the 5th defendant has not demonstrated that it stands to suffer irreparable damage in the event that the instant application is disallowed.
26. I am therefore persuaded that the balance of convenience tilts in favour of preserving the status quo pending the hearing and determination of this suit, where the issues of retainer, validity of the Fee Agreement, alleged forgery, and entitlement to lien can be conclusively determined upon proper evidentiary evaluation, given that the core contractual foundation of the 5th defendant's claim remains contested.
27. In the end, this Court finds that the 5th defendant's application dated 18th October 2024 is not merited. It is hereby dismissed. Costs to abide the outcome of the main suit.

It is so ordered.



**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF MARCH 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Okinda for the 5th defendant/applicant

Ms Amonde for the 1st defendant/respondent

Ms Rono for the plaintiff

No appearance for the 2nd, 3rd and 4th defendants

Ms B. Wokabi – Court Assistant.

