

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM NO. E484 OF 2025

**AERO MEDICAL SOLUTIONS
LIMITED....PLAINTIFF/APPLICANT**
VERSUS
**FLIGHT TRAINING CENTRE
LTD.....DEFENDANT/RESPONDENT**
RULING

1. Before the Court for determination is the Plaintiff's Notice of Motion dated 15th July 2025, brought under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Order 40 Rules 1, 2, 4 and 10 and Order 51 Rule 1 of the Civil Procedure Rules.
2. By the said application, the Plaintiff seeks the following substantive prayers:
 - i. *Pending the hearing and determination of the suit, an order be and is hereby issued restraining the Defendant whether by itself, agents, servants and/or employees, from removing the Cessna Grand Caravan C208B, Manufacturer's Serial Number 208B - 5055 and registration number 5Y - FTE ("the Aircraft") from the jurisdiction of this Honourable Court or in any way disposing of, leasing, transferring, interfering with, tampering with, dismantling, or stripping the Aircraft or*

- any of its components and technical manuals, logbooks, and maintenance records.*
- ii. Pending the hearing and determination of the suit, an order be and is hereby issued compelling the Defendant to forthwith redeliver and hand over possession of the Aircraft, together with its ignition keys, all attached components, accessories, logbooks, and technical records, to the Plaintiff at Hawk Aviation Hangar, Wilson Airport, Nairobi pursuant to redelivery provisions under clause 12 of the Lease to Purchase Agreement dated 25th August 2022.*
 - iii. In the alternative to prayer ii, an order be and is hereby issued enforcing the Plaintiff's proprietary right to forthwith repossess the Aircraft from the Defendant wherever it may be located, together with its ignition keys, components, and records, with the liberty to take all necessary steps to preserve and restore its airworthiness.*
 - iv. The OCPP, Nyaribo Police Station, Nyeri (or the OCS of the nearest police station where the Aircraft is located) is hereby directed to assist the Plaintiff to ensure peaceful repossession and enforcement of the above orders as needed.*
 - v. The costs of and incidental to this Application shall abide in the outcome of the main suit.*
 - vi. Such other, further and/or incidental Orders as the Honourable Court may deem just and expedient.*

3. The application is premised on the grounds therein and supported by the affidavit of John Stone, a director of the Plaintiff. The deponent avers that the Plaintiff and the Defendant entered into an Aircraft Lease Agreement dated 15th November 2019 (herein referred to as the 1st Lease) where the Plaintiff leased the Defendant a Cessna Grand Caravan C208B - 2127 aircraft registration 5Y-FTC for a term of 60 months at a monthly rent of US\$16,000. The Defendant paid a security Deposit of US\$400,000 refundable without interest upon expiry or earlier termination, or be applied towards the purchase of the aircraft.
4. He depones that in April 2023, while the Aircraft was on sublease to a third party, it was abandoned in Nyala airport at Sudan due to civil unrest, thereby frustrating the lease, and the same was discharged by operation of the law. He avers that a War Risk Claim was duly paid out by the 1st Aircraft underwriters to the Plaintiff as co-insured and first loss payee in January 2024, fully compensating for the first Aircraft insured value.
5. He further states that the Defendant neither exercised any purchase option nor acquired any proprietary interest in the aircraft. He avers that the agreement in respect to the first lease did not entail any financial agreement by the Plaintiff towards the full acquisition of the aircraft by the Defendant, and thus the Defendant's claim to a portion of the compensation paid in respect to the aircraft is without any basis.

6. The Defendant is in arrears of the sum of US\$78,587.52 plus interest at the rate of 2% per month.
7. He further depones that the Plaintiff is the registered owner of the second aircraft Cessna Grand Caravan C208B, Manufacturer's Serial Number 208B - 5055 and registration number 5Y - FTE. The plaintiff and the Defendant entered into a Lease to Purchase Agreement dated 25th August 2022 (herein after referred to as the 2nd Lease) for a period of 5 years at monthly premiums of US\$ 27,000, late charges of US\$550.00 per month, and an engine reserves at US\$125.00 per hour for each hour the Defendant operated the aircraft. Any payments made after 10 days constituted an event for default, entitling the plaintiff to terminate the contract.
8. It is deponed that the Defendant breached its obligations and fell into substantial arrears, failed to maintain the aircraft and its airworthiness, and failed to maintain insurance cover, thereby fundamentally breaching the agreement.
9. He avers that despite demand notices and subsequent termination of the 2nd Lease by notice dated 9th June 2025, the Defendant has failed to redeliver the aircraft and continues to detain it in a deteriorated condition, thereby exposing the Plaintiff to financial loss and risk. The Plaintiff quantifies its losses at USD 706,637.52 and contends that unless the orders sought are granted, it stands to suffer irreparable harm.

10. The application is opposed. The Defendant filed grounds of opposition dated 30th July 2025 and a replying affidavit sworn by Godwin Wachira Gichuhi a director of the Defendant on 16th October 2025. He avers that the relationship between the Plaintiff and the Defendant was not a pure lease arrangement but a financing arrangement through which the Plaintiff facilitated the Defendant's acquisition of aircraft.
11. He avers that the Defendant bought the Aircraft Registration No. 5Y-FTC from Malawi, (previously with Malawi Registration No. 7Q-LEK), from a company known as Afric Incorporation. The Aircraft was delivered to the Defendant for a consideration of USD 1,500,000. On 17th October 2019, the Defendant paid a deposit of USD 400,000 to the seller, which the Plaintiff treated as a security deposit, leaving a balance of USD 1,150,000.
12. He avers that to finance the balance of the purchase the Defendant sought a credit facility from Textron Finance Corporation in America due to the delay the Defendant opted to source an alternative source of raising funds and thus approached Mr. John Stone of Aero Medical Solutions with a request to finance the balance, where the Plaintiff agreed to furnish the Defendant a sum of USD 1,150,000 repayable with interest at the agreed rate of twelve (12%) per cent per annum in Sixty (60) monthly instalments of USD 16,000. He avers that to secure the Plaintiff's interest, it was agreed that the craft be registered in the name of the

Plaintiff. Following that the Plaintiff paid the balance of the purchase price to African Incorporation, and the aircraft was released to the Defendant.

13. He avers that Mr. John Stone had changed the terms of clause 10.5 of the agreement touching on the insurance claim. That as the Defendant's business expanded, it entered into a series of aircraft hire arrangements, commencing in August 2021, at an hourly rate of USD 650, with the Plaintiff bearing the maintenance and insurance costs.
14. It is further deponed that, over time, some of the leased aircraft were disposed of by the Plaintiff, thereby terminating those particular engagements, save for aircraft Registration No. 5Y-FTE, which remained in use. The Defendant maintains that the relationship in respect of these aircraft was purely one of hire, governed by usage and hourly rates.
15. He further avers that the aircraft Registration No. 5Y-FTC was abandoned and ultimately destroyed in Sudan in April 2023 due to civil unrest, whereupon the Defendant had insured the aircraft for its full value and successfully pursued an insurance claim which was settled in January 2024 in the sum of USD 1,585,000.
16. He contends that, notwithstanding the destruction of the aircraft, the Plaintiff continued to invoice monthly instalments of USD 27,000 for a period of approximately eight (8) months, despite the Defendant deriving no benefit from the aircraft. He asserts that it consented to payment of

the insurance proceeds to the Plaintiff on the understanding that its proportionate interest would be accounted for.

17. He further alleges that the Plaintiff structured the transaction as a lease to disguise what was in truth a credit facility, took advantage of the Defendant's financial position, and introduced additional charges, including an initiation fee, without agreement. He maintains that the documentation, correspondence, and amortization schedule demonstrate that the true intention of the parties was that of lender and borrower, rather than lessor and lessee.
18. On that basis, the Defendant disputes the existence of any arrears as alleged by the Plaintiff, contending that payments made, together with the insurance compensation, fully or substantially discharged its obligations. It accuses the Plaintiff of misapplying funds, rendering incorrect accounts, and wrongfully asserting default.
19. He denies any breach on the part of the Defendant, and asserts that the Plaintiff has reneged on the true financing arrangement, and contends that no *prima facie* case has been established to warrant the grant of injunctive relief, further maintaining that the balance of convenience tilts in its favour.
20. The application was heard by way of written submissions. The Plaintiff's submissions are dated 10th November 2025, and the Defendant's submissions are dated 24th January 2026.

Analysis and determination

21. Having considered the application, affidavits, and rival submissions, the sole issue for determination is whether the Plaintiff has met the threshold for the grant of interlocutory injunctions and related reliefs.
22. The principles governing the grant of such relief are now settled. In **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, the Court held that:

“The conditions for the grant of interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally 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.”

23. These principles were restated in **Nguruman Limited v Jan Bonde Nielsen & 2 Others - Civil appeal 77 of 2012 [2014] KECA 606 KLR**, where the Court of Appeal emphasized that the three limbs are sequential and not to be considered in isolation.

Whether a prima facie case has been established

24. The Court of Appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others - Civil Appeal 39 of 2002 [2003] KECA 175 KLR** defined a *prima facie* case as:

“... 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 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.”

25. The Plaintiff’s case is predicated on the assertion that the relationship between the parties was strictly contractual, governed by lease and lease-to-purchase agreements, under which ownership of the aircraft remained vested in it unless and until the purchase option was exercised.
26. The Defendant, on the other disputes that characterization and asserts that the transaction was, in substance, a financing arrangement, under which it acquired an equitable and beneficial interest by virtue of substantial payments and assumption of operational obligations.
27. When determining whether a matter discloses a *prima facie* case, a Court must consider the entire case. The pleadings, the factual basis, the respective parties' positions, the remedies sought, and the law.

28. The dispute herein raises fundamental and contested questions regarding the true nature of the transaction, the parties' respective rights, and the state of accounts between them. These are not peripheral issues, they go to the very root of the suit and cannot be conclusively determined on affidavit evidence alone.
29. Equally, no material has been placed before the Court to demonstrate that there exists any real or imminent risk of the Defendant removing the aircraft from the jurisdiction of this Court. The allegation, to the extent that it has been made, remains bare and unsupported by evidence. It is trite that he who alleges must prove, and in the absence of cogent evidence, such apprehension cannot form a proper basis for the grant of injunctive relief.
30. The Plaintiff further seeks orders of repossession and redelivery of the aircraft. Such orders are, by their nature, mandatory and would require the Defendant to take positive steps and relinquish possession.
31. The grant of such relief at an interlocutory stage is governed by well-settled principles. A mandatory injunction will only issue in the clearest of cases and in the presence of special circumstances. The Court of Appeal in **Locabail International Finance Ltd v Agroexport & Others [1986] 1 ALL ER 901** held that:

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

cases either where the court thought the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff.”

32. The present dispute, as already observed, is marked by contested facts and competing legal characterizations of the transaction. The rights asserted by the Plaintiff are neither clear nor uncontested, and the Defendant has raised serious and *bona fide* triable issues that merit full ventilation at trial.
33. In those circumstances, this Court cannot properly conclude, at this stage, that the Plaintiff has established a clear and unassailable case to warrant the grant of a mandatory injunction.
34. Accordingly, and in light of the foregoing analysis, I am not satisfied that the Plaintiff has demonstrated a prima facie case with a probability of success.

Whether irreparable injury has been demonstrated.

35. On the second limb, the Plaintiff contends that it stands to suffer irreparable loss due to continued detention and use of the aircraft, which it describes as a wasting asset subject to depreciation and potential exposure to liability.
36. The Defendant counters that the Plaintiff's claim is purely commercial and quantifiable, noting that the alleged losses have been specifically pleaded in monetary terms.

37. The law is settled that an interlocutory injunction will not issue where damages would be an adequate remedy. As held in ***Nguruman Limited (supra)*** the second limb is not satisfied where the injury complained of is compensable in damages.
38. In this case, the Plaintiff has quantified its alleged losses, including unpaid rent, penalties, and diminution in value. This, in my view, is a clear indication that any injury suffered is capable of being remedied through an award of damages.
39. I therefore find that the Plaintiff has failed to demonstrate irreparable harm

Balance of convenience

40. Turning to the third limb, where the Court is in doubt, it will determine the matter on a balance of convenience. It is common ground that the Defendant is in possession of the aircraft. The orders sought by the Plaintiff are, in effect, mandatory in nature, as they seek to compel redelivery and thereby alter the *status quo*.
41. Bearing in mind the need to preserve the subject matter of the dispute without prejudicing either party's case, I am persuaded that the balance of convenience tilts in favour of maintaining the *status quo* pending the determination of the suit.
42. In the result, I find that the notice of Motion dated 15th July 2025 is without merit and is hereby dismissed. For

avoidance of doubt, the *status quo* in respect to the aircraft is to be maintained. The costs shall be in the cause.

RULING delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **April** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Okeyo h/b for Mr. Oloo for Plaintiff

Ms. Watitu h/b for Mr. Mahinda for Defendant

Court Assistant: *Lispa*