



REPUBLIC OF KENYA



**Chalk Hill Hotel Limited v Rosslyn Rose Hotel Limited (Commercial Case E058 of 2026)  
[2026] KEHC 6022 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 6022 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E058 OF 2026**

**PM MULWA, J**

**APRIL 30, 2026**

**BETWEEN**

**CHALK HILL HOTEL LIMITED ..... PLAINTIFF**

**AND**

**ROSSLYN ROSE HOTEL LIMITED ..... DEFENDANT**

**RULING**

1. Before the court for determination is the Plaintiff/Applicant's Notice of Motion dated 3<sup>rd</sup> February 2026 brought pursuant to section A, 1B & 3A of the *Civil Procedure Act*; Order 40 Rules 1–3 of the Civil Procedure Rules, 2010; Sections 6 & 7 of the *Arbitration Act*, 1995; and Rule 2 of the Arbitration Rules, 1997. in essence, the applicant prays for:
  - a. A temporary prohibition order restraining the Defendant, its agents or servants from selling, transferring, charging, leasing, or in any manner dealing with or interfering with Title No. Nairobi/Block 100/85 (the suit property) and the developments herein pending the hearing of the suit and the arbitral proceedings
  - b. A conservatory order preserving the suit property pending the conclusion of ongoing arbitration proceedings between the parties before the London Court of International Arbitration.
  - c. An order inhibiting under section 68 of the *Land Registration Act* to be registered against the Title No. Nairobi/Block 100/85 to preserve the property pending the determination of the application, suit and arbitral proceedings.
  - d. Costs of the application
  - e. Any other such orders that the court may deem fit.



2. The application is supported by the affidavit of Imran Khan, a director of the Plaintiff. He deposes that the Defendant is the registered proprietor of Title No. Nairobi/Block 100/85, which constitutes its sole asset, was incorporated as a special purpose vehicle to hold the property. The parties entered into a Master Agreement dated 24<sup>th</sup> September 2021 containing an arbitration clause under the London Court of International Arbitration (LCIA) Rules. Disputes have arisen and arbitration proceedings are ongoing.
3. The Applicant contends that the Defendant has issued an investment memorandum inviting bids for the property, thereby posing a real risk of alienation which would render the arbitral proceedings nugatory. It is further urged that the property is unique and damages would not be an adequate remedy.
4. In his further affidavit sworn on 21<sup>st</sup> April 2026, he avers that the current application is not intended to invite the court to determine the merits of the dispute but aimed at preserving the subject matter. He avers that the Defendant, leased the suit property to it, with the plaintiff retaining the right to repurchase the share, thus giving the Plaintiff a sufficient right into preservation of the suit property. Any dealings with the Defendants shares would effectively amount to alienation of the subject matter.
5. The Defendant opposes the application through the Replying Affidavit of Fidel Mwaki sworn on 23<sup>rd</sup> March 2026. It is contended that the Applicant has no proprietary interest in the suit property and that the dispute before the arbitral tribunal concerns damages only. The Defendant maintains that the threshold for grant of interim measures has not been met and that no irreparable harm has been demonstrated. He further outlines the various LCIA arbitrations between the parties, namely LCIA 1, LCIA 2 and LCIA 3, and avers that the central issue in those proceedings is the validity of the Master Agreement, particularly whether it lapsed for failure to satisfy suspensive conditions within the stipulated time.
6. He contends that the arbitration proceedings have largely been delayed by interlocutory applications initiated by the Plaintiff. The deponent further avers that the Plaintiff has itself taken inconsistent positions in the arbitrations, including seeking specific performance and subsequently abandoning that claim, and has since elected to pursue damages following its termination of both the Master Agreement and the Lease Agreement.
7. The Defendant asserts that by terminating the agreements, the Plaintiff extinguished any basis upon which it could claim an interest in the suit property, and that the dispute in arbitration does not concern ownership of the property but rather contractual claims for damages. It is therefore contended that the suit property is not the subject matter of the arbitral proceedings and is not under threat in a manner that would warrant protection by way of injunction or conservatory orders.
8. The application was heard by way of written submissions. Both parties filed their submission which I have considered.
9. The issues arising for determination are:
  - i. Whether the Court should grant interim measures of protection under section 7 of the [Arbitration Act](#).
  - ii. Whether the Applicant has satisfied the threshold for the grant of injunctive relief.
  - iii. Whether an order of inhibition under section 68 of the [Land Registration Act](#) is warranted.



## Whether the Court should grant interim measures of protection

10. It is clear from the application as formulated that the Applicant is seeking an interim measure of protection pending the hearing of the arbitral proceedings in London. Section 7 of the *Arbitration Act* 1995 provides as follows:

“7 Interim measures by Court

1. It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.
2. Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.”

11. Whereas the court has powers to grant an order of interim measure of protection under section 7 of the *Arbitration Act*, the principle of party autonomy still reigns. The interim measures are otherwise supposed to be in such a way that would support the arbitral process and ensure the process is not undertaken in vain. The court should guard against undermining the arbitral process by the kind of orders it issues.

12. In *Safaricom limited v Ocean View Beach Hotel Limited & 2 Others* (2010) KECA 346 (KLR) the court of appeal set out the principles to be considered before granting an interim measure under section 7 as follows:

- i) The existence of an arbitration agreement.
- ii) Whether the subject matter of the arbitration is under threat.
- iii) In the special circumstances which is the appropriate measure of protection after an assessment of the merits of the application?
- iv) For what period must the measure be given especially if requested for before commencement of the arbitration so as to avoid encroaching on the tribunal’s decision-making powers as intended by the parties?

13. In the instant case, it is not in dispute that the parties voluntarily entered into a Master Agreement dated 24<sup>th</sup> September 2021, there exists a valid arbitration clause. Indeed, arbitral proceedings are ongoing before the LCIA. This limb is therefore satisfied.

14. The Court must then determine whether the subject matter of arbitration is under threat. The Applicant asserts that the Defendant has invited bids for the suit property, thereby exposing it to alienation. The Defendant, while not denying the issuance of an investment memorandum, maintains that it retains absolute ownership and that the dispute in arbitration is limited to damages.

15. At this interlocutory stage, the Court is not called upon to determine the merits of the arbitral dispute. The central inquiry is whether the substratum of the dispute is at risk of being rendered nugatory.



16. I am persuaded that the suit property lies at the centre of the parties' commercial relationship. Any disposition thereof, whether directly or indirectly through transfer of shares in the special purpose vehicle, would fundamentally alter the subject matter and potentially prejudice the arbitral proceedings.
17. I am therefore satisfied that there exists a real risk of alienation sufficient to trigger the Court's protective jurisdiction under section 7 of the *Arbitration Act*.

**Whether the Applicant has satisfied the threshold for the grant of injunctive relief**

18. The principles governing the grant of interlocutory injunctions are settled in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where the court held that there are 3 principles of granting an injunction, namely, a prima facie case with a probability of success, likelihood of irreparable harm not compensable by damages, and if in doubt, determine on a balance of convenience.
19. These principles were restated and clarified in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, where the Court of Appeal emphasized that the three conditions are sequential.
20. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125 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 as to call for an explanation or rebuttal from the latter.”
21. The Applicant contends that it has a protectable interest arising from the Master Agreement and the arbitral proceedings. The Respondent, however, argues that the Applicant terminated the agreements and now seeks damages only.
22. From the material before the Court, it is not disputed that the Defendant is the registered proprietor of the suit property. There is no evidence of any legal or equitable interest registered in favour of the Applicant.
23. Further, the Respondent's contention that the arbitral proceedings concern the validity of the Master Agreement and claims for damages has not been controverted by cogent evidence.
24. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, the Court held that courts do not rewrite contracts for parties. Where the Applicant has terminated the underlying agreements, its claim prima facie appears to lie in damages rather than proprietary rights.
25. In the circumstances, I am not persuaded that the Applicant has established a prima facie case demonstrating a legal or equitable interest in the suit property.
26. On irreparable harm, the Applicant asserts that the property is unique and that damages would not suffice, and that its disposal would render the arbitral proceedings nugatory. However, the Respondent has demonstrated that the dispute revolves around contractual rights. In *Kenleb Cons Ltd v New Gatitu Service Station Ltd* [1990] KLR 557, the Court held that where damages are an adequate remedy, an injunction ought not to issue.
27. Where a party's claim is essentially monetary, the alleged harm is compensable by damages. The Applicant has not demonstrated that the Respondent would be incapable of satisfying any award that may be made by the arbitral tribunal.
28. I therefore find that irreparable harm has not been established.



29. On the balance of convenience, even if the Court were in doubt, the balance of convenience would favour maintaining the status quo in a manner that does not unduly fetter the Respondent's proprietary rights.
30. The Respondent has shown that it has invested substantially in the property and that restraining its dealings would occasion prejudice. On the other hand, the Applicant's interest is not proprietary but contractual.
31. The balance of convenience tilts in favour of the party likely to suffer greater prejudice. In this case, that party is the Respondent.

**Whether an inhibition order should be issued**

32. Section 68(1) of the *Land Registration Act* empowers the Court to issue an inhibition to preserve land pending the determination of a dispute.
33. However, such an order must be grounded on a demonstrable interest in the property. As already found, the Applicant has not established a recognizable proprietary or equitable interest.
34. Consequently, the threshold for issuance of an inhibition order has not been met.
35. In conclusion, while the Court has jurisdiction under Section 7 of the *Arbitration Act* and acknowledges the existence of a risk of alienation, the Applicant has failed to satisfy the threshold for the grant of injunctive relief.
36. The upshot is that the Notice of Motion dated 3<sup>rd</sup> February 2026 is hereby dismissed.
37. Costs shall follow the event and are awarded to the Respondent.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Ms. Koranje h/b for Mr. Wachira for Plaintiff/Applicant

Mr. Asige, K. for Defendant/Respondent

Court Assistant: Lispa

