



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO E419 OF 2025

**IN-VITRO DIAGNOSTICS (E.A.) LTD
PLAINTIFF**

=VERSUS=

**ZURI MANOR VILLAS LIMITED
DEFENDANT**

RULING

1. By a Notice of Motion dated 21st August 2025, brought under Sections 1A, 1B, and 3A of the Civil Procedure Act, Section 7 of the Arbitration Act, and Order 51 Rule 1 of the Civil Procedure Rules, the Plaintiff/Applicant seeks the following orders:

a. Spent.

b. THAT this Court be pleased to issue an order of injunction restraining the Defendant/Respondent from evicting the Plaintiff/ Applicant from the suit premises and/or in any way interfering with its peaceful enjoyment or obstructing its rights of ingress and/or egress into and /or out of Villa No. 4 (Sectional Title No. Nairobi/Block 2/121/4)

situate on Nairobi/Block 2/121 pending hearing and determination of the intended arbitration proceedings between the parties herein.

c. THAT this Court be pleased to issue a temporary injunction restraining the Defendant/Respondent by itself, its agents and/or its servants from transferring, charging, alienating, selling, leasing, encroaching, trespassing and/or in any way dealing with Villa No. 4 (Sectional Title No. Nairobi/Block 2/121/4) situate on Nairobi/Block 2/121 pending hearing and determination of the intended arbitration proceedings between the parties herein.

d. THAT in the alternative and without prejudice to the above prayers, an order of status quo to be maintained in respect to Villa No. 4 (Sectional Title No. Nairobi/ Block2/121/4) situate on Nairobi/Block 2/121 pending hearing and determination of the intended arbitration proceedings between the parties herein.

e. THAT the costs for this Application be in the suit.

f. Such other or further relief as this Honourable Court may deem fit and just to grant.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Samuel Manga Nderitu, the Applicant's General Manager, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that the parties entered into a sale agreement dated 31st October 2022 for the purchase of Villa No. 4 (Sectional Title No. Nairobi/Block 2/121/4) situated on Nairobi/Block 2/121 at a purchase price of Kshs. 95,000,000/= . He averred that the Applicant paid a deposit of Kshs. 30,000,000/=, upon execution of the agreement, while the remaining balance of Kshs. 65,000,000/= was to be financed through mortgage facilities secured by a professional undertaking from the Applicant's financier.
4. He further averred that the Applicant furnished the Respondent's advocates with a professional undertaking dated 27th January 2023, which was accepted as sufficient. He asserted that the Applicant paid the required closing costs under the Agreement for Sale.
5. He explained that the delay in the transaction was caused by the processes of converting the main title, amalgamation, change of use, and the eventual processing of sectional titles, which took approximately three years and were beyond the Applicant's control. He stated that during this period, the Applicant consistently sought updates on the progress of the title processing from the Respondent through its advocate, and it was agreed that the Applicant would take possession of the premises in the meantime.
6. He further stated that on 13th June 2025, the Respondent informed the Applicant that the sectional title was ready and subsequently requested a new financial commitment from

the Applicant's financier despite the earlier commitment having been accepted. According to the deponent, this necessitated renewed engagement with the financier, which in turn issued an updated letter of offer due to the passage of time.

7. The deponent averred that the Respondent subsequently issued a Completion Notice dated 4th July 2025, demanding payment of the remaining balance within twenty-one days. In response, the Applicant reiterated that it had fulfilled its obligations under the Agreement for Sale and requested additional time to finalize the financing arrangements.
8. He averred that on 1st August 2025, the Respondent issued a termination notice demanding that the Applicant vacate the suit premises and hand over vacant possession, which he argued was premature and based on a defective completion notice.
9. He further stated that, although the Applicant invoked the dispute resolution clause under the Agreement for Sale, expressing its intention to refer the dispute to arbitration, the Respondent issued an eviction notice and maintained that the transaction had been terminated.
10. He argued that the Applicant would be evicted and the suit property sold to third parties if the orders sought are not granted, which would cause irreparable loss and render the intended arbitration nugatory.

THE RESPONDENT'S CASE

11. The Respondent filed a Replying Affidavit sworn by its director, Li Bo, in opposition to the application.
12. The deponent argued that the application is misconceived, defective, and an abuse of the Court process. He contended that the suit is improperly before the Court because the deponent of the supporting affidavit did not produce any board resolution authorizing him to institute proceedings on behalf of the Applicant company. He further asserted that the Applicant had not formally initiated arbitration proceedings, as the mere invitation to the Respondent to propose arbitrators did not amount to the commencement of arbitration.
13. He acknowledged the Agreement for Sale dated 31st October 2022 and argued that the Applicant had misinterpreted its obligations under the agreement. He maintained that the Applicant was aware at the time of contracting that the agreement was explicitly conditional upon the completion of title conversion, amalgamation, and change of user processes.
14. He explained that throughout the entire period, the Applicant had vacant possession of the suit premises since 2023, after paying only the deposit of Kshs. 30,000,000/=, while the Respondent had been deprived of the remaining purchase price, amounting to Kshs. 65,000,000/=, and the time value of those funds.
15. He argued that the condition precedent to completion was met when the sectional title was issued on 13th June

2025, and the obligation to pay the remaining balance of the purchase price immediately arose. He further contended that the Applicant's reliance on the professional undertaking issued in January 2023 was misplaced as it was based on an earlier letter of offer that had become outdated. The Respondent, therefore, regarded it as commercially reasonable to require a new financial undertaking to confirm that funding was still available.

16. He maintained that the Completion Notice dated 4th July 2025 was proper and valid. He asserted that the Applicant was in breach of the Sale Agreement for failing to remedy the default within the twenty-one-day period stipulated in the agreement. Consequently, the Respondent acted within its contractual rights under the agreement by issuing the termination notice dated 1st August 2025.

17. The deponent further contended that there was no dispute capable of referral to arbitration, as there was a clear and admitted debt obligation that resulted from the Applicant's failure to pay the balance of the purchase price. He asserted that the Applicant acknowledged nonpayment in its correspondence and had merely sought indulgence for additional time.

18. He asserted that the Applicant approached the Court with unclean hands, having failed to pay the outstanding balance of Kshs. 65,000,000/= while continuing to occupy the property for several years. He contended that the application is an attempt to shield the Applicant from the

consequences of its breach and to frustrate the Respondent's contractual right to rescind the agreement. The deponent urged the Court to dismiss the application with costs.

THE RESPONSE

21. In a Further Affidavit sworn on 4th November 2025, the deponent averred that he is a shareholder and director of the Applicant's company and is duly authorised to swear affidavits on its behalf. He argued that it was unnecessary for a director to present a board resolution authorising the swearing of an affidavit. He maintained that Courts have consistently held that directors are presumed to have the authority to act on behalf of a company unless proven otherwise. He further stated that the Respondent had not provided any evidence showing that he lacked the authority to swear the affidavits filed in the matter.
22. He argued that, contrary to the Respondent's assertion, Section 7 of the Arbitration Act allows a party involved in an intended arbitration to seek interim protective orders from the Court either prior to or during the arbitral process. He asserted that the Applicant was not required to initiate arbitration proceedings prior to requesting the conservatory orders in the application.
23. He disputed the Respondent's claim that no arbitrable dispute existed. According to the deponent, the Respondent unlawfully issued termination and eviction notices to the

Applicant, thereby creating a dispute within the scope of Clause 21.1 of the Sale Agreement, which states that all disputes between the parties, including those related to termination, are subject to arbitration.

24. The deponent urged the Court to find that the application was properly before it and allow it as prayed.

25. The application was canvassed by way of written submissions.

THE APPLICANTS SUBMISSIONS

26. The Applicant filed its submissions dated 23rd October 2025.

27. On behalf of the Applicant, Counsel outlined the following issues for the Court's determination:

a) Whether the Applicant is entitled to the interim orders;

b) Whether there is an arbitration agreement;

c) Whether the subject matter of arbitration is under threat;

d) Whether the court can grant interim protection before arbitration without encroaching on the Tribunal's jurisdiction.

28. Counsel submitted that the present application was brought under Section 7 of the Arbitration Act, seeking interim measures of protection pending the commencement and determination of arbitration proceedings between the parties. Counsel argued that the Court has jurisdiction to

grant such relief where necessary to preserve the subject matter of an intended arbitration.

29. Counsel submitted that Section 7 of the Arbitration Act empowers the Court to grant interim protective measures either before or during arbitration to preserve the subject matter of the dispute. To support this point, reliance was placed on **Safaricom Limited v Ocean View Beach Hotel Limited & 2 Others [2010] eKLR** and **Coast Apparel EPZ Limited v Mtwapa EPZ Limited & Another [2017] eKLR**, where the Courts confirmed that interim protection can be granted to safeguard the arbitral process.
30. Counsel argued that the subject matter of the intended arbitration is under imminent threat because the Respondent has already issued an eviction notice and expressed its intention to terminate the transaction. Counsel contended that unless the Court intervenes to preserve the property, the Respondent may alienate or otherwise deal with the suit property, thereby rendering the intended arbitration nugatory.
31. In conclusion, Counsel submitted that the orders sought are protective in nature and do not require the Court to determine the substantive dispute between the parties, which is reserved for the arbitral tribunal. Counsel urged the Court to allow the application as prayed. Counsel relied on **Moi University Pension Scheme (Registered Trustees) v Stanlib Kenya Limited [2020] KEHC 7677 (KLR)** and

East African Breweries Limited v G4S Secure Data Solutions (Kenya) Limited [2020] KEHC 984 (KLR).

THE RESPONDENTS SUBMISSIONS

32. The Respondent filed its submissions dated 17th November 2025.
33. On behalf of the Respondent, Counsel submitted that the Applicant had not met the threshold for the grant of interim measures of protection under Section 7 of the Arbitration Act. To support this point, reliance was placed on **Futureway Limited v National Oil Corporation of Kenya [2017] KEHC 6365 (KLR)** and **Safaricom Limited v Ocean View Beach Hotel Limited & 2 others [2010] KECA 346 (KLR)**.
34. Counsel submitted that the Applicant failed to comply with Clause 21 of the Sale Agreement, which required the parties to first issue a written consultation notice and to engage in consultations for a period of fifteen days before referring any dispute to arbitration.
35. Counsel argued that there was no arbitrable dispute between the parties. Counsel submitted that the Applicant does not dispute the existence of the outstanding balance of Kshs. 65,000,000/= and acknowledged non-payment in its correspondence. Counsel contended that a mere refusal to pay an acknowledged debt does not constitute a dispute capable of reference to arbitration.

36. Counsel further submitted that the Applicant had approached the Court with unclean hands. Counsel argued that the Applicant had enjoyed possession and use of the property for several years without paying the remaining balance of the purchase price, and was now attempting to use the Court process to frustrate the Respondent's contractual right to rescind the agreement.

37. Counsel submitted that the Applicant failed to demonstrate that the subject matter of the intended arbitration was under any threat of dissipation sufficient to justify the grant of interim protection orders. It was argued that the mere issuance of a termination notice does not constitute a threat to the subject matter and that the Applicant had not demonstrated any special circumstances justifying the orders sought.

38. It was submitted that any loss claimed by the Applicant was recoverable through damages, and that the balance of convenience favoured the Respondent, who continued to suffer financial harm by being deprived of both the property and the remaining purchase sum. In conclusion, Counsel urged the Court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

39. Having considered the application, the respective affidavits and the rival submissions, the following issues arise for the determination:

- a. Whether the Applicant's suit is properly before the Court; and*
 - b. Whether the Applicant has satisfied the threshold for the grant of an interim measure of protection pending the hearing and determination of the intended arbitral proceedings.*
40. Regarding the first issue, the Respondent challenged the validity of the suit, arguing that the affidavit in support of the application was sworn by Samuel Manga Nderitu without presenting a board resolution authorizing him to initiate proceedings on behalf of the Applicant's company. The Applicant argued that the deponent, as a director and shareholder of the company, is authorized to swear affidavits and initiate proceedings on its behalf without requiring a formal board resolution.
41. Order 4 Rule 1(4) of the Civil Procedure Rules states that when the Plaintiff is a corporation, the verifying affidavit must be sworn by an officer of the company who is properly authorized under the company's seal to do so.
42. In **Spire Bank Limited v Land Registrar & 2 others [2019] eKLR**, the Court of Appeal articulated that the purpose of the rule is to safeguard corporate entities by ensuring that only an authorized person can initiate proceedings on their behalf and to prevent unauthorized persons from obtaining orders in the name of a corporation. It was held that:

“It is essential to appreciate that the intention behind Order 4 Rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company’s seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.”

43. Similarly, in **Siokwei Tarita Ltd v Dr Charles Walekwa (2012) KEHC 305 (KLR)**, the Court held that:

“...a person swearing on behalf of a corporation needs authority under the corporate seal of the company. But again this is an internal affair and unless there is protest supported by evidence

that the person swearing the affidavit or acting on behalf of the company is not authorized by the company seal, on my part I do not see how this can be questioned by an outsider. This is especially so where the person swearing the affidavit is one who is ordinarily expected to act for the company, i.e., is vested with ostensible authority. I know of a line of authorities providing that there must be an averment in the affidavit that the deponent is authorized by the company seal to swear the affidavit. However, I take the position that it is the real authority which is important, a matter which is internal to the company and not a mere averment; for one can make the simple averment in an affidavit that he is duly authorized by the corporation seal to swear the particular affidavit, but that mere averment does not clothe him/her with authority that he/she never had in the first place. It is the actual authority which is important, and my position is that the court should be slow to make inquiry as to the authority of the deponent unless there is sufficient material presented that the person has no authority or unless it is in the clearest of circumstances that the deponent/agent is not one who could ever be vested with such authority.”

44. In the matter at hand, the Respondent has not presented any evidence to demonstrate that Samuel Manga Nderitu lacks the authority to act on behalf of the Plaintiff company. Conversely, the deponent presented records from the Company Registry showing that he is registered as a Director of the Plaintiff's company, thereby granting him ostensible authority to represent the company in legal proceedings.

45. In the absence of evidence to the contrary and guided by the authorities cited above, this Court is satisfied that the failure to present a formal board resolution does not render the suit incompetent. Accordingly, the objection raised by the Respondent is without merit.

46. Regarding the second issue, **Black's Law Dictionary, 8th Edition**, defines an interim measure of protection as follows:

“An international tribunal order to prevent a litigant from prejudicing the final outcome of a lawsuit by arbitrating action before judgment has been reached. This measure is comparable to a temporary injunction in national law.”

47. **Section 7 of the Arbitration Act** states that:

‘(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.

48. In **Safaricom Limited v Ocean View Beach Hotel Limited & 2 others, Civil Application No. NAI 327 of 2009 [2010] eKLR**, the Court of Appeal outlined the conditions that must be met before an interim measure of protection is granted as follows:

- i) The existence of an arbitration agreement.**
- ii) Whether the subject matter of 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 the commencement of the arbitration so as to avoid encroaching on the tribunal's decision making power as intended by the parties."**

49. Further, in **Moi University Pension Scheme (Registered Trustees) v Stanlib Kenya Limited [2020] eKLR**, it was held that the purpose of an interim measure of protection is to preserve the subject matter of the arbitration and to ensure that the arbitral process is not rendered nugatory.
50. The grant of an interim protective measure is discretionary. The purpose of an order of protection is to preserve assets or to maintain the status quo pending the outcome of the arbitral proceedings.
51. It is not in dispute that the parties entered into a Sale agreement regarding Villa No. 4 (Sectional Title No. Nairobi/Block 2/121/4) situated on Nairobi/Block 2/121. Clause 21 of the agreement states that any dispute arising from or related to the agreement or its termination shall, initially, be resolved through consultation and, if unresolved, shall be referred to arbitration.
52. The Applicant contends that the Respondent issued a completion notice and subsequently a termination notice prematurely. Subsequently, the Applicant invoked the dispute-resolution clause in the agreement and notified its intention to refer the dispute to arbitration.
53. The Respondent, on the other hand, asserts that the completion notice dated 4th July 2025 was valid and that the Applicant failed to remedy its default within the twenty-one days stipulated in the agreement. Accordingly, the termination notice issued on 1st August 2025 was lawful. The

Respondent maintained that there is no dispute suitable for referral to arbitration.

54. At the interlocutory stage, the Court is required to determine whether a prima facie case has been established. In **UAP Provincial Insurance Co. Ltd v. Michael John Beckett (2014) ekr**, the court held that:

“At the interim stage, the court only needs to be satisfied that there is a dispute capable of being referred to arbitration and that the arbitration agreement is not plainly invalid.”

55. At this stage, the Court is required to satisfy itself that there exists a dispute capable of being referred to arbitration and that the interim protection is necessary to preserve the subject matter pending that determination.

56. Having considered the pleadings, the evidence on record, and the correspondence exchanged between the parties, it is evident that they disagree on the validity of the completion notice, the alleged default by the Applicant and the legality of the termination of the agreement.

57. These issues clearly constitute a dispute arising from the Agreement for Sale and fall squarely within the arbitration clause specified in the agreement.

58. It is not in dispute that the Applicant is in occupation of the suit property. The Applicant has demonstrated that the Respondent issued an eviction notice while claiming that the transaction had been terminated. If the Applicant were to be

evicted or otherwise disrupted before the arbitral tribunal determines the dispute, the substratum of the arbitration would be irreversibly altered.

59. In the circumstances and without making any definitive finding on the dispute between the parties, the Court is satisfied that the Applicant has established a prima facie case and has met the threshold for the grant of an interim measure of protection.

60. Based on the evidence presented by the parties, this Court finds and holds that the balance of convenience favours maintaining the status quo pending the hearing and determination of the intended arbitral proceedings.

61. The upshot of the foregoing is that the application dated 21st August 2025 is allowed on the following terms:

a. The obtaining status quo shall be maintained pending the hearing and determination of the intended arbitral proceedings. For the avoidance of doubt, the status quo shall be as follows:

i) The Respondent, whether by itself, its agents, servants or any person acting under its authority, shall not evict, remove or in any manner interfere with the Applicant's current occupation of the suit property pending the hearing and determination of the intended arbitral proceedings.

ii) The Respondent shall not transfer, charge, lease, alienate, sell or otherwise deal with the suit property in a manner that would alter its ownership or legal status pending the hearing of the intended arbitration.

iii) Each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF APRIL, 2026

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF

In the absence of the parties

Ahmed - Court Assistant