

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E246 OF 2023

NEW INTERNATIONAL CONSULTANCY

COMPANY LTD.....1ST PLAINTIFF/APPLICANT

ELVIS & DULE CONSULTING LTD.....2ND PLAINTIFF/APPLICANT

-VERSUS-

APEXVISION LIMITED.....1ST DEFENDANT/RESPONDENT

ZICT TECHNOLOGY COMPANY LTD.....2ND DEFENDANT/RESPONDENT

NETEX CAYMAN HOLDINGS

COMPANY LIMITED.....3RD DEFENDANT/RESPONDENT

RULING

1. The plaintiffs/applicants filed a Notice of Motion application dated 2nd June 2024 pursuant to the provisions of Sections 3A & 63(c) & (e) of the Civil Procedure Act and the inherent powers of the Court, Order 40 Rules 1(a) and (b), 2(1), (2), 3, 3(1), 8 & 9 and Order 39 Rules 5(1)(a), (2) & (3) of the Civil Procedure Rules, 2010, and any other enabling provisions of the law. The plaintiffs seek an order for interlocutory injunction pending the hearing and determination of this suit, to restrain the defendants, whether acting by themselves, their servants, agents, employees, particularly the 1st defendant, or any other persons on their behalf, from interfering with the 1st plaintiff's entitlement to receive payments from Telkom Kenya Limited. Specifically, that order is intended to prohibit any actions such as stopping payments, repudiating, cancelling, issuing adverse communication, withdrawing, or engaging in conduct amounting to termination or alienation, or otherwise frustrating the contractual arrangements established

under the Collection Agreement dated 12th October 2015 and the Receiving and Payment Agreement dated 30th May 2019.

2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on 2nd June 2021 by Ms Caroline Kiarie Kamau, the 1st plaintiff's Manager and Head of Operations. Ms Kamau averred that in 2015, Apexvision Limited (1st defendant) entered into a contract with Telkom Kenya Limited for the provision of managed services, but due to persistent payment defaults by Telkom, the 1st defendant appointed New International Consultancy Company Limited (1st plaintiff) under a Collection Agreement dated 12th October 2015 to recover outstanding debts. She deposed that the said Agreement granted the 1st plaintiff full authority to pursue debt collection, including instituting legal proceedings independently, and provided for remuneration based on recovered sums. She further deposed that following continued non-payment, the 1st plaintiff instituted legal proceedings against Telkom, including High Court cases in 2015 and 2018.
3. Ms Kamau stated that in 2019, due to the intended closure of the 1st defendant by its parent company, ZICT Technology Company Limited, a Receiving and Payment Agreement was executed between the 2nd defendant and Elvis & Dule Consulting Limited (2nd plaintiff), appointing the latter to receive and distribute payments from Telkom. She claimed that this Agreement allocated payment priorities and recognized the 2nd defendant's entitlement to Kshs.100,000,000/= for its role. She further stated that the said plaintiff later assigned its rights under the Agreement to the 1st plaintiff. Ms Kamau deposed that by August 2022, after prolonged efforts, Telkom acknowledged a debt of approximately Kshs.240,000,000/=, of which at least Kshs.213,000,000/= was due to the 1st plaintiff under the Agreements.
4. Ms Kamau contended that in February 2023, the 1st plaintiff issued a letter to Telkom directing it to halt payments, in breach of both the Collection Agreement

and the Receiving and Payment Agreement, as these prohibited interference with the 1st plaintiff's debt collection mandate. She averred that the 2nd defendant and its parent company had previously not objected to the 1st plaintiff's actions and only intervened after the debt recovery efforts bore fruit. She asserted that the defendants' actions have caused substantial loss to the plaintiffs, who invested significant time and resources in recovering the debt, and now they risk suffering irreparable harm.

5. In opposition to the application herein, the 1st defendant filed Grounds of Objection dated 13th May 2024, raising the following grounds –
 - i) The application lacks merit and is otherwise an abuse of the process of Court; and
 - ii) The application is misconceived, incompetent and fatally defective.
6. The 1st defendant also filed a replying affidavit sworn on 10th June 2024 by Mr. Huang Jinrong, a Director of the 1st defendant company. Mr. Jinrong averred that the application is ambiguous and misconceived, as it seeks to restrain the 1st defendant from receiving payments from Telkom Kenya Limited for services it rendered, yet the plaintiffs were neither parties to the original contract nor providers of any services to Telkom. He confirmed that the 1st defendant entered into a contract with Telkom for provision of Power and Air Conditioning Managed Services from 1st May 2015 to 30th April 2018, and under that Agreement, all payments were contractually due exclusively to the 1st defendant, with no authorization given to any third party to receive such payments. He challenged the validity of the alleged Collection Agreement dated 12th October 2015 and asserted that it was illegal, fraudulent, and void *ab initio*.
7. Mr. Jinrong contended that the purported signatory on behalf of the 1st defendant lacked authority, as he was neither a Director nor the Company Secretary, and that the Agreement was not properly executed. He deposed that the terms of the

Agreement are unconscionable and heavily skewed in favour of the 1st plaintiff, granting it excessive powers, exorbitant remuneration, and restrictive provisions that undermine the 1st defendant's rights. He also stated that the matter has been reported to investigative authorities, including the Police and the Directorate of Criminal Investigations, for inquiry into possible fraud. In respect to the Receiving and Payment Agreement, Mr. Jinrong asserted that the 1st defendant was neither a party to, nor aware of the said Agreement, and cannot be bound by its terms. He further stated that any purported assignment of rights affecting the 1st defendant required its knowledge and consent, which was not obtained, rendering such arrangements unenforceable against it.

8. Mr. Jinrong maintained that the plaintiffs have failed to demonstrate any legal basis for diverting payments from the 1st defendant, who remains the lawful recipient under its contract with Telkom. He averred that the plaintiffs have neither established a *prima facie* case with a probability of success, nor demonstrated that they would suffer irreparable harm, as they have sought liquidated damages, thereby acknowledging that damages would be an adequate remedy. He further averred that the balance of convenience favours dismissal of the application herein, as the core issues, especially the validity of the disputed Agreements, can only be properly determined at trial.
9. In a rejoinder, the plaintiffs filed a further affidavit sworn on 16th September 2024 by Ms Alice Wathare Ngatho, the plaintiffs' Head of Operations. Ms Ngatho averred that the Collection Agreement dated 12th October 2015 was validly executed by Ms Sun Lifeng, and countersigned by Mr. Isaac Mukui Nduru, who was at the material time the duly appointed Company Secretary of the 1st defendant, as evidenced by official records and his subsequent resignation in November 2022. Ms Ngatho further averred that the 1st defendant's own documents, including annual returns and financial records, confirm Mr. Nduru's role and demonstrate that the 1st defendant made payments to the 1st plaintiff in

2017 amounting to Kshs.1,680,000/= as consultancy fees pursuant to the Collection Agreement, which payments were duly approved by the 1st defendant's Directors and reflected in the plaintiff's bank statements.

10. Ms Ngatho deposed that the 1st defendant's closure was initiated and approved within its parent company structure, and that the 2nd defendant exercised control over the 1st defendant as its subsidiary. She explained that the Receiving and Payment Agreement was implemented, with the 2nd plaintiff fulfilling its obligations, including undertaking substantial work, communicating outcomes to the 1st defendant's Director, and directly settling debts owed to the 1st defendant's suppliers. She further deposed that supplementary minutes of Resolution were executed to support the Agreement. Additionally, that the plaintiffs undertook debt recovery efforts through litigation against Telkom Kenya Limited in 2015 and 2018 in accordance with the Collection Agreement. Ms Ngatho concluded that documentary evidence demonstrates that both the Collection Agreement and the Receiving and Payment Agreement were validly entered into and performed, and that the defendants are bound by their terms and cannot selectively deny them.

11. The 1st defendant thereafter filed a supplementary affidavit sworn on 30th October 2024 by Mr. Huang Jinrong, the Director of the 1st defendant company. Mr. Jinrong reiterated that the alleged Collection Agreement dated 12th October 2015 is invalid, fraudulent, and unenforceable. He contended that the purported signatory, Ms Sun Lifeng, lacked authority to bind the 1st defendant as she was neither a Director nor an authorized Officer, but merely held a technical or junior role within the company. He further disputed the involvement of Mr. Isaac Nduru, asserting that his name does not appear on the Agreement and raised concerns about a conflict of interest, as the said Isaac Nduru served as the Company Secretary for both the 1st defendant and the 1st plaintiff. He maintained that the Agreement is unconscionable, overly favourable to the plaintiffs and

incapable of binding the 1st defendant, as it purports to restrict the defendants' legal rights.

12. Mr. Jinrong denied that any payments made by the 1st defendant to the 1st plaintiff were pursuant to the alleged Collection Agreement and instead asserted that such payments were internal cash reimbursements for marketing expenses. He further disputed claims that the 1st defendant was dissolved or controlled by the 2nd defendant and maintained that the 1st defendant remains a separate, active legal entity. Regarding the Receiving and Payment Agreement, Mr. Jinrong emphasized that the 1st defendant was neither a party to, nor aware of it, and cannot be bound by its terms. In addition, he deposed that any such arrangement was conditional upon the closure or receivership of the 1st defendant, which has not occurred, rendering the plaintiffs' claims premature and legally untenable.

13. Mr. Jinrong also challenged the validity of the alleged minutes of Resolution and denied that any authority was granted to the plaintiffs to act on behalf of the 1st defendant, including making payments to suppliers. He asserted that any prior legal proceedings were not based on the disputed Agreements but on a Power of Attorney, and that payments arising from such proceedings were intended for the 1st defendant but were diverted to unknown accounts. He maintained that the plaintiffs have failed to demonstrate any legal entitlement to the sums claimed, any services rendered to Telkom Kenya Limited, or any actual loss suffered.

14. In response to the 1st defendant's supplementary affidavit, the plaintiffs filed a further affidavit sworn on 25th February 2025 by Ms Alice Wathare Ngatho, the plaintiffs' Head of Operations. Ms Ngatho reiterated that the Collection Agreement dated 12th October 2015 is valid, lawful, and not tainted by fraud as alleged. She averred that the 1st defendant's claim of illegality is unsubstantiated, belated, and raised only after eight (8) years of performance under the Agreement, during which the 1st defendant raised no such claim, thereby affirming its validity. She further maintained that the Agreement was executed by

the 1st defendant's CEO, Ms Sun Lifeng, who had both actual and apparent authority to bind the company, as evidenced by longstanding practice, internal approvals, and external recognition of her role, including documentation from Telkom Kenya.

15. In addition, Ms Ngatho claimed that the said Agreement was countersigned by the Company Secretary, and that subsequent payments approved by the 1st defendant's Directors and remitted to the plaintiff further confirm the Agreement's validity and implementation. She disputed the 1st defendant's assertions regarding the lack of authority of the signatories and alleged irregularities, stating that such matters are internal governance issues that cannot affect third-party reliance under the doctrine of apparent authority and indoor management. She also highlighted inconsistencies in the 1st defendant's position regarding the role of the Company Secretary, which undermines its credibility. She rejected claims that the Agreement was unfair or outside its scope, stating that any such challenge is time-barred and contradicted by the 1st defendant's prolonged acquiescence and benefit from the plaintiff's performance. She demonstrated that payments made to the plaintiff were external RTGS transfers duly approved by the 1st defendant's Directors, not internal reimbursements as alleged.

16. Ms Ngatho asserted that although the 1st defendant may remain formally registered, it has effectively ceased operations, having dismissed employees, disposed of assets, and transferred receivables, rendering it a shell entity. She maintained that the 2nd defendant exercises control over the 1st defendant as part of the same corporate group, supported by overlapping directorship, corporate structure, and evidence of its role in initiating the 1st defendant's closure. She emphasized that the Receiving and Payment Agreement validly binds the defendants, and that any internal procedural issues cannot be invoked to defeat obligations to third parties.

17. She refuted claims regarding misdirected payments and stated that funds were duly credited to the 1st defendant's account and that the plaintiffs have fully performed their obligations under both Agreements. She emphasized that the plaintiffs have invested significant time and resources over several years in debt recovery efforts, and that the defendant's interference, through its letter to Telkom Kenya instructing a halt of payments, constitutes a clear breach of the Agreements.

18. The instant application was canvassed by way of written submissions. The plaintiffs' submissions were filed on 27th March 2025 by the law firm of C.N. Kihara & Company Advocates, whereas the 1st defendant's submissions were filed by the law firm of Mohammed Muigai LLP Advocates on 8th April 2025.

19. Mr. C.N. Kihara, learned Counsel for the plaintiffs submitted that the plaintiffs' case is that the 2015 Collection Agreement and the 2019 Receiving and Payment Agreement are valid, binding, and fully enforceable. He stated that the 1st defendant performed under both Agreements for several years, made payments, and accepted substantial benefits without raising any objection, and that the plaintiffs fully discharged their obligations, including the recovery of significant debts amounting to approximately Kshs.825,000,000/= and the assumption of related liabilities. He asserted that this contractual framework is further reinforced by the final Arbitration Award issued in 2022, which conclusively directed that payments from Telkom Kenya be made to the plaintiffs. He maintained that the 1st defendant's prolonged silence and continued performance amount to clear affirmation and acceptance of the Agreements.

20. Counsel submitted that the impugned Agreements bind the 1st defendant as they were executed and/or witnessed by Senior Officers of the corporate group, including Directors and the CEO, and the 2nd defendant exercised clear operational and strategic control over the 1st defendant, including its establishment and eventual shutdown. Mr. C.N. Kihara cited the case of **Freeman**

& Lockyer v Buckhurst Park Properties [1964] 2 QB 480 and asserted that authority arose through representation by conduct. Further, that even if actual authority was disputed, the 1st defendant's conduct including accepting performance, benefiting financially, and remaining silent for years, constituted ratification of the Agreements as recognized by the Court in the case of **Akuisi Farmers Company Limited v Robert Ndiritu Gitonga** [2019] KEHC 4877 (KLR) and the Court of Appeal in **Middle East Bank Kenya Limited v Thalia Katia Maria Castanha** [2016] KECA 18 (KLR).

21. Additionally, Counsel contended that under the indoor management rule as stated by the Court of Appeal in the case of **East African Safari Air Limited v Anthony Ambaka Kegode & another** [2011] KECA 160 (KLR), the plaintiffs were not required to investigate internal corporate procedures and were entitled to assume that all necessary approvals had been properly obtained. Mr. C.N. Kihara stated that the doctrine of estoppel equally applies, as by its words and conduct, the 1st defendant led the plaintiffs to believe that the Agreements were valid and would be honoured, thereby inducing them to invest time, resources, and effort over several years. He referred to the provisions of Section 120 of the Evidence Act and the principles articulated by the Court of Appeal in the case of **Serah Njeri Mwobi v John Kimani Njoroge** [2013] KECA 501 (KLR), and further stated that the 1st defendant is precluded from resiling from that position and denying the Agreements at this late stage. He stated that any challenge to the validity of the Agreements is statute-barred under Section 4(1) of the Limitation of Actions Act, having been raised approximately eight (8) years after execution, and any allegation of fraud is similarly untenable under Section 26(c) of the Limitation of Actions Act, as it could and ought to have been discovered with reasonable diligence at the time of execution.

22. Counsel submitted that the scope and commercial purpose of the Agreements are clear and unambiguous, and that they provide for the collection of debts from

Telkom Kenya, the direct receipt of funds by the plaintiffs, and the settlement of supplier arrears, all within a performance-based remuneration structure. He contended that the 1st defendant's argument that the Agreements are unfair or one-sided is untenable, given that it accepted and benefited from them for years without objection. He argued that the Agreements reflect a commercially rational allocation of risk, in a debt recovery arrangement where payment is contingent upon successful recovery. Counsel claimed that the 1st defendant's attempt to impose a "*closure*" or "*deregistration*" precondition is a misinterpretation of the Agreements. He submitted that properly construed, the term "*shutdown*" refers to cessation of operations rather than formal deregistration. Mr. C.N. Kihara stated that the evidence shows that the 1st defendant had already ceased operations by 2018-2019, having terminated its business, dismissed employees, and disposed of assets.

23. Mr. C.N. Kihara maintained that Clauses 2.1, 2.2, and 2.5 expressly allow the 2nd plaintiff to receive payments immediately and continuously, and that the phrase "*after shutdown*" is descriptive rather than conditional. He further stated that Clause 2.6 confirms that funds must first be received before supplier obligations are settled, thereby demonstrating that receipt of funds necessarily precedes any deregistration process. He argued that the 1st defendant's interpretation would create a commercial absurdity and render the Agreement unworkable, which could not have been the parties' intention. Counsel asserted that the impugned Agreements, with the Power of Attorney executed in 2015, establish that the 1st plaintiff holds a "*first charge*" over recovered funds since the contractual structure and the Arbitration Award consistently direct payments to the plaintiffs and do not contemplate any reversion of funds to the 1st defendant. He emphasized that the Agreements do not provide for the 1st defendant to receive funds after execution, reinforcing the position that the plaintiffs are the intended recipients.

24. Counsel submitted that the evidence adduced demonstrates that the defendants operate within a unified corporate group structure, with overlapping Directors and centralized control. He stated that the 2nd defendant not only established the 1st defendant but also initiated its closure, and its Senior Officers, including the CEO, served across multiple entities. He asserted that this shared control and knowledge render the 1st defendant's claim of ignorance implausible. He submitted that the Agreements and related resolutions were duly signed, stamped, and implemented, and any alleged internal procedural irregularities cannot affect their validity vis-à-vis third parties. He further submitted that the 1st defendant's allegations regarding improper payments and fraud are unfounded since the evidence shows that funds, including approximately Kshs.323,000,000/=, were duly credited to the 1st defendant's account, and any subsequent internal handling of those funds falls outside the plaintiffs' responsibility. Counsel maintained that the allegations of fraud are speculative and contradicted by years of consistent performance and approval of payments by the 1st defendant itself.

25. Mr. C.N. Kihara reiterated that although the 1st defendant remains formally registered, it has in reality ceased all operations, dismissed its employees, and disposed of its assets, and it exists merely as a shell entity and cannot demonstrate any real prejudice. He submitted that the plaintiffs have invested five to six years of work without remuneration and face significant financial exposure, including obligations to creditors and operational liabilities. He asserted that the harm they stand to suffer is irreparable and cannot be adequately compensated by damages, given the 1st defendant's lack of operational capacity. Counsel submitted that the conduct of the 1st defendant further undermines its position, as it remained silent throughout the performance of the Agreements, accepted their benefits, and only raised objections after the plaintiffs had substantially performed. This conduct, Mr. C.N. Kihara contended, amounts to acquiescence, waiver, and bad faith, and

the defendant cannot now be permitted to approbate and reprobate by disavowing Agreements from which it has long benefited.

26. He stated that applying the principles laid down by the Court in the case of **Giella v Cassman Brown & Co. Ltd** [1973] EA 358, the plaintiffs have clearly established a *prima facie* case anchored in the Agreements, the course of performance, and the Arbitration Award. He added that they have also demonstrated that they face irreparable harm if the 1st defendant is allowed to interfere with payment flows, while the balance of convenience overwhelmingly favours them, given that the 1st defendant is non-operational. He further stated that under the cumulative effect of the doctrines of authority, ratification, estoppel, indoor management, limitation, and proper contractual interpretation, the Agreements remain valid and enforceable. He reiterated that the 1st defendant cannot deny their binding effect, cannot reinterpret their terms to defeat performance, and cannot reclaim funds contractually assigned to the plaintiffs. He asserted that the 1st defendant is legally obligated to honour the Agreements and refrain from any interference with the plaintiffs' right to receive payment.

27. Mr. Khaseke, learned Counsel for the 1st defendant relied on the Court of Appeal case of **Naftali Ruthi Kinyua v Patrick Thuita Gachure & another** [2015] KECA 911 (KLR) and submitted that the plaintiffs have failed to satisfy the requirements precedent to the plaintiffs being granted an order of interlocutory injunction. He contended that the injunction order being sought herein has been overtaken by events, as the directive to Telkom Kenya Limited to stop payments was already issued in February 2023, rendering the application an afterthought. He further argued that the alleged Collection Agreement of 2015 and the Receiving and Payment Agreement are highly disputed in validity, on the basis that the purported signatory, Ms Sun Lifeng, was neither a Director nor the CEO of the 1st defendant, and that there is no evidence of proper execution or authorization.

28. Counsel also raised concerns regarding the alleged involvement of Mr. Isaac Nduru, whose role is unclear and whose dual position as Company Secretary of both the 1st plaintiff and 1st defendant suggests possible impropriety. Mr. Khaseke submitted that the impugned Agreements were part of a fraudulent scheme, now under investigation by authorities including the Directorate of Criminal Investigations. He stated that the plaintiffs are not privy to the primary contract between Telkom Kenya Limited and the 1st defendant, and that they have not enjoined Telkom Kenya Limited in these proceedings, making their claim to payment untenable.
29. Relying on the Court of Appeal case of **Nguruman Limited v Jan Bonde Nielsen & 2 others** [2013] KECA 347 (KLR), Counsel asserted that failure to establish a *prima facie* case is sufficient to dispose of the application herein. He contended that any loss alleged by the plaintiffs is quantifiable and compensable by damages, as evidenced by their own pleadings seeking liquidated sums of USD 1,800,000.00 and additional damages.
30. Citing the Court of Appeal case of **Esso Kenya Ltd v Okiya** [1992] KECA 53 (KLR) and the case of **Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others** [2016] KEHC 7263 (KLR), Mr. Khaseke argued that where damages are an adequate remedy, injunctive reliefs should not be granted. He maintained that the 1st defendant is a duly incorporated and operational entity capable of satisfying any decree, and that payments due from Telkom Kenya Limited remain its property and a potential source for any compensation that may be awarded. Counsel submitted that the balance of convenience, tilts in favour of the defendant, as granting the injunction would risk unjust enrichment of the plaintiffs by allowing them to receive funds without a proven contractual entitlement. He cited the case of **Wainaina v Governor, Kajiado County & another** [2025] KEELC 1182 (KLR), and disputed the plaintiffs' reliance on alleged authority and participation in prior litigation,

asserting that such issues go to the merits of the case and cannot be conclusively determined at an interlocutory stage.

ANALYSIS AND DETERMINATION.

31. I have considered the instant application, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the grounds of objection, replying and supplementary affidavits by the 1st defendant, as well as the written submissions by Counsel for the parties. The issue that arises for determination is whether an order of injunction should issue against the defendants.

32. Interlocutory injunctions are provided for under Order 40 Rule 1 of the Civil Procedure, 2010, which states as follows -

Where in any suit it is proved by affidavit or otherwise -

- a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
- b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

33. An interlocutory injunction is granted on the basis of sound evidence and applicable legal principles since it is a discretionary remedy. The Court in the case of **Giella v Cassman Brown and Co. Ltd** (supra), laid down the principles to be considered by the Court when dealing with an application for an interlocutory injunction as follows:-

The conditions for the grant of an 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 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.

34. The Court of Appeal in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** [2003] KECA 175 (KLR), discussed what constitutes a *prima facie* case as hereunder –

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.

35. Upon perusal of the evidence filed in this suit, this Court is of the considered view that the plaintiffs' case is that the Collection Agreement dated 12th October 2015 and the Receiving and Payment Agreement dated 30th May 2019 are valid, binding, and enforceable. They contended that the 1st defendant performed under these Agreements over several years, made payments, and accepted the benefits arising therefrom without objection. The plaintiffs relied on documentary evidence, including bank RTGS transfers and internal approvals, to demonstrate part performance. They also relied on a final Arbitration Award issued in 2022, directing that payments from Telkom Kenya Limited be made to the plaintiffs.

36. The plaintiffs also invoked the doctrines of apparent authority, ratification, estoppel, and the indoor management rule in arguing that the impugned Agreements were executed or witnessed by Senior Officers, including the CEO and Company Secretary of the 1st defendant company, and that any internal irregularities cannot be relied upon to defeat third-party rights. They maintained

that the 1st defendant's prolonged silence and continued performance amount to affirmation of the Agreements, and that any challenge to their validity is both belated and legally untenable.

37. The 1st defendant on the other hand vehemently disputed the validity of the impugned Agreements and instead asserted that they are null and void *ab initio* on account of fraud, illegality, and lack of authority. The plaintiff contended that the signatory of the Collection Agreement dated 12th October 2015, Ms Sun Lifeng, was neither a Director nor an authorized Officer of the 1st defendant company capable of binding the company, and that there is no evidence of proper execution in accordance with the company's internal governance procedures.

38. The 1st defendant also raised concerns regarding the role of Mr. Isaac Nduru, including an alleged conflict of interest arising from his dual position as a Company Secretary of both the 1st plaintiff and the 1st defendant. The 1st defendant maintained that it was not privy to the Receiving and Payment Agreement and cannot be bound by it, and that the plaintiffs are strangers to the primary contract between the 1st defendant and Telkom Kenya Limited, thus they are not privy to the terms therein and cannot benefit from it or purport to execute the said Agreements in their favour. It is also the 1st defendant's position that the impugned transactions are the subject of ongoing investigations by the Directorate of Criminal Investigations.

39. It is trite law that at this interlocutory stage, this Court is not called upon to make definitive findings on contested questions of fact or law, particularly on issues such as fraud, authority, and the validity of contractual instruments, which fall for determination at the trial upon full evidence. The Court must instead determine whether on the material presented before it, the plaintiffs have demonstrated a right which has been infringed or is threatened with infringement, and which calls for protection by way of an injunction.

40. In that regard, this Court notes that while the 1st defendant has raised serious and weighty allegations regarding the validity of the impugned Agreements, the plaintiffs have placed before this Court evidence of prolonged performance under the Agreements, including payments made and received, as well as reliance on the Agreements over a considerable period of time. The existence of an Arbitration Award directing payment to the plaintiffs, coupled with evidence of prior dealings between the parties, lends *prima facie* support to the plaintiffs' claim that the Agreements were acted upon and treated as binding. Further, that the issues of authority, including whether the alleged signatories had actual or apparent authority, and whether the 1st defendant subsequently ratified the Agreements through its conduct, are matters that cannot be conclusively determined at this stage but nonetheless raise triable issues.

41. This Court also takes note of the 1st defendant's submissions that the injunctive relief being sought herein has been overtaken by events, on the basis that the directive to Telkom Kenya Limited to stop payments was issued in February 2023, prior to the filing of the instant application. While this argument goes to the practicability and efficacy of the orders sought, it does not in itself negate the existence of a *prima facie* case. If anything, the issuance of such a directive may be indicative of the very interference that the plaintiffs seek to restrain, and may support the contention that their alleged rights under the Agreements have been infringed or are under threat. Accordingly, this Court is persuaded that the question of whether the orders sought herein can effectively issue in the circumstances is a distinct consideration from whether a *prima facie* right has been established.

42. In the circumstances, and without making any conclusive findings on the validity or enforceability of the impugned Agreements, this Court is satisfied that the plaintiffs have demonstrated the existence of a *prima facie* case with a probability of success, by raising serious, arguable, and triable issues regarding the validity

of the Agreements, the authority of the persons who executed them, the conduct of the parties, and the entitlement to receive payments from Telkom Kenya Limited, which merits interrogation at trial.

43. As to whether the plaintiffs stand to suffer irreparable harm not compensable by an award of damages, the 1st defendant argued that the plaintiffs have expressly sought liquidated damages, thereby acknowledging that damages would be an adequate remedy. The plaintiffs on the other hand contended that they have invested substantial time, resources, and expertise over a period of several years in debt recovery efforts, and that their remuneration is contingent upon successful recovery. They further asserted that the 1st defendant has ceased operations and is effectively a shell entity, thereby casting doubt on its ability to satisfy any future decree.

44. In light of the foregoing, this Court is persuaded that while the plaintiffs have quantified part of their claim, the nature of the dispute involves an ongoing contractual framework governing the receipt and distribution of funds, and alleged interference with that process. The disruption of an ongoing contractual payment structure and revenue stream, particularly where payment is performance-based and contingent on recovery, may not be adequately remedied by damages alone. Further, the allegation that the 1st defendant has ceased operations, if ultimately established, raises legitimate concerns as to the efficacy of a remedy in damages.

45. In the premise, this Court is satisfied that the plaintiffs have demonstrated that they stand to suffer irreparable harm in the event that the application herein is disallowed.

46. The issue of balance of convenience does not arise since this Court is not in doubt. Nevertheless, based on the analysis I have made, the balance of convenience tilts in favour of the plaintiffs.

47. In the premise, and having carefully weighed all the material before me, this Court is satisfied that the plaintiffs have met the threshold for being granted an interlocutory injunction.

48. Accordingly, this Court finds that the instant application is merited. I make the following orders –

- (i) I hereby issue an interlocutory injunction restraining the defendants, by any of them, servants, agents, employees and/or otherwise howsoever described from interfering, stopping, repudiating, cancelling, sending letters, withdrawing, and/or undertaking such conduct as amounts to repudiating, terminating, or alienating, or other mechanisms intended to frustrate the 1st plaintiff from being paid by the Telkom Kenya Limited and/or in any other way acting in breach of its Collection Agreement dated 12th October 2015 and the Receiving and Payment Agreement dated 30th May 2019, with the plaintiffs, pending the hearing and determination of this suit; and**
- (ii) Costs shall be in the cause.**

It is so ordered.

DATED, SIGNED and DELIVERED at KIAMBU on this 17TH day of APRIL 2026. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. C.N. Kihara for the plaintiffs/applicants

Ms Nimo h/b for Mr. Khaseke for the 1st defendant/respondent

No appearance for the 2nd & 3rd defendants

Ms. Julia – Court Assistant.