



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**PKF Kenya LLP v Onjor & 2 others (Commercial Case E502 of 2025)
[2026] KEHC 5975 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E502 OF 2025**

PM MULWA, J

APRIL 30, 2026

BETWEEN

PKF KENYA LLP PLAINTIFF

AND

FELIX WENDA ONJOR 1ST DEFENDANT

SUSAN JOAN ATIENO ONJOR 2ND DEFENDANT

JACKLINE IVA OLET 3RD DEFENDANT

RULING

1. This ruling concerns the Plaintiff's Notice of Motion dated 29th July 2025 brought under Section 63(e) of the *Civil Procedure Act*, Order 39 Rules 5 and 6, Order 40 Rules 1 and 10 of the Civil Procedure Rules, 2010. The Plaintiff seeks several interlocutory orders as follows:
 - i. ...Spent
 - ii. That pending the hearing and determination of the application and the suit, this Court be pleased to issue orders restraining withdrawals, transfers or any other debit dealings in the Defendants' accounts held with Mhasibu Sacco Society Limited, namely:
 - a. the 1st Defendant's account number 0101-002-MHS04160 up to a maximum of KES 11,785,447/-;
 - b. the 2nd Defendant's account number 0101-002-MHS04274 up to a maximum of KES 1,782,166/-; and
 - c. the 3rd Defendant's account number 0101-002-MHS06264 up to a maximum of KES 8,612,330/-.



- iii. An order freezing the 1st Defendant's account number 0100200799000 held with Standard Chartered Bank up to a maximum sum of KES 22,179,943/-, pending the hearing and determination of both the application and the suit.
 - iv. An order freezing the Defendants' accounts listed in prayer ii.
 - v. In the alternative, the Plaintiff prays that the Court compel the Defendants to deposit in court security in the sum of KES 22,179,943/- as security for the due performance of any decree that may be issued in the main suit.
 - vi. Orders compelling the Defendants to render a full account of all transactions involving the alleged converted sums, including disclosure of the persons to whom the funds were transferred, and orders directing the tracing of the said funds including any subsequent transfers or dispositions to third parties.
 - vii. An order be issued to trace the sums converted by the Defendants including any subsequent transfers and dispositions to third parties, to identify the current location and possession of the said funds.
 - viii. Pending the hearing and determination of this suit, an order be issued compelling the defendants to provide a full account of all transactions involving the converted sums, including details of all parties to whom monies were transferred.
 - ix. Pending the hearing and determination of this suit, an order be issued to trace the sums converted by the defendants including any subsequent transfers and dispositions to third parties, to identify the current location and possession of the said funds.
 - x. The costs of this application be borne by the defendants.
2. The application is premised on the grounds of the face of the record and supported by the affidavit of Ritesh Mirchandani, the Managing Partner of the Plaintiff, who states that he is duly authorized to swear the affidavit on behalf of the Plaintiff. The Plaintiff contends that the 1st Defendant, its former Finance Manager, orchestrated unauthorized transfers amounting to KES 22,179,943/- from the Plaintiff's payroll to accounts held by the Defendants at Mhasibu Sacco Society Limited between January 2022 and September 2024.
 3. It is alleged that the 2nd and 3rd Defendants, who were not employees of the Plaintiff, were irregular beneficiaries of those transfers. The Plaintiff asserts that unless restrained, the Defendants may dissipate the funds, thereby defeating the claim.
 4. It is further deponed that the 1st Defendant subsequently obtained a staff loan in September 2024, which remains unpaid, and thereafter absconded from duty in November 2024. The Plaintiff states that it reported the matter to Gigiri Police Station, following which investigations were conducted and criminal charges were preferred against the Defendants in Milimani Criminal Case No. E320 of 2025.
 5. The Plaintiff therefore apprehends that unless the Court intervenes, the Defendants may withdraw or dissipate the funds held in their Sacco accounts, thereby defeating the Plaintiff's claim.
 6. The Defendants oppose the application. The 1st and 3rd Defendants filed a Replying sworn on 14th October 2025 by the 1st Defendant on behalf of the 3rd Defendant. He deposes that the application is duplicative and amounts to an abuse of the Court process, as similar preservation and freezing orders had already been sought and granted in Milimani Chief Magistrate's Criminal Case No. MCCR/E320/2025, wherein the Plaintiff is the complainant. He states that the said orders remain in force and



were issued pending investigations by the Directorate of Criminal Investigations (DCI), with which the Defendants have fully complied.

7. The 1st and 3rd Defendants contend that the impugned accounts contain no funds and are already under investigation, with access restricted pursuant to court orders. They argue that the present application is sub judice and amounts to a re-litigation of issues already before a competent court. It is further their position that the Plaintiff has failed to establish a prima facie case, irreparable harm, or any risk of dissipation, and that any alleged loss is purely pecuniary and compensable in damages. They characterize the application as speculative, unsupported by evidence, and intended to harass.
8. They further submit that the matters raised require strict proof at trial through cross-examination and ought not to be determined at an interlocutory stage, as this would prejudice their right to a fair hearing. Consequently, they urge the Court to find the application misconceived, vexatious, and an abuse of the court process, and to dismiss it with costs.
9. The 2nd Respondent filed Grounds of Opposition dated 6th October 2025. on the grounds that the application lacks merit, is premature, frivolous, vexatious and a waste of judicial time. The Orders sought are capable of being granted at an interlocutory stage as they require proof. No valid reasons have been advanced by the Plaintiff to warrant the granting of the orders sought. The applicant has failed to establish a prima facie case, there is no risk and in deed there is no realm risk that the 2nd Defendant will dissipate the money. and that the orders sought ought herein is an equitable remedy that is only available to a deserving party at the discretion of the court, and the plaintiff/applicant is no such deserving party.
10. The application was heard through written submissions, which I have considered.
11. The Plaintiff submits that it has established a proper basis for the grant of a mareva injunction, contending that the 1st Defendant, while serving as Finance Manager, orchestrated unauthorized transfers of payroll funds into accounts held by the Defendants, who had no lawful entitlement thereto. It relies on affidavit and documentary evidence tracing the impugned transactions and argues that, in the absence of a replying affidavit by the 2nd Defendant, its averments remain uncontroverted, citing Daniel Kibet Mutai & 9 others v Attorney General [2019] eKLR.
12. The Plaintiff further submits that the purpose of a freezing order is to preserve assets and prevent dissipation, as stated in *Kanduyi Holdings Limited v Balm Kenya Foundation & Another* [2013] eKLR, and that it has satisfied the applicable threshold as set out in *Beta Healthcare International Limited v Grace Mumbi Githaiga & 2 others* [2016] eKLR, namely the existence of a good arguable case and a real risk of dissipation. It maintains that a good arguable case has been demonstrated, within the meaning of *Guaranty Trust Bank (K) Limited v ES Solo Holdings Limited* [2021] eKLR, and that the Defendants have failed to rebut the evidentiary burden under Section 107 of the *Evidence Act*, as emphasized in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR.
13. On the question of dissipation, the Plaintiff contends that the Defendants' conduct evidences dishonesty and supports an inference of risk, relying on *International Air Transport Association & another v Akarim Agencies Company Limited & 2 others* [2014] eKLR and the classical authority of *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980]. It further submits that the balance of convenience favours preservation of the funds, and that the existence of parallel criminal proceedings does not render the suit an abuse of process, as held in *Kenya Section of the International Commission of Jurists v Attorney General & 2 others* [2012] eKLR and *Republic v Director of Public Prosecutions Ex parte Francis Njakwe Maina* [2015] eKLR.



14. The 2nd Defendant, supported by the 1st and 3rd Defendants, opposes the application, submitting that it fails to meet the threshold for interlocutory relief. She contends that grounds of opposition are sufficient to controvert the application under Order 51 Rule 14, and that the burden of proof remains with the Plaintiff.
15. It is further submitted that the conditions for a *mareva* injunction, as articulated in *Central Bank of Kenya v Giro Commercial Bank Ltd & Another and Nanji & 2 Others v Exobi (Finance House) Ltd*, have not been satisfied, as no credible evidence links her to the alleged transfers. She challenges the evidentiary basis of the Plaintiff's claim and denies any risk of dissipation, noting that the account is already frozen under criminal proceedings.
16. On the alternative prayer for security, the 2nd Defendant relies on *Kanduyi Holdings Limited v Balm Kenya Foundation & Another and Kuria Kanyoko t/a Amigos Bar and Restaurant v Francis Kinuthia Nderu & Others*, to argue that such orders are exceptional and require clear proof of intent to obstruct execution, which has not been demonstrated. She maintains that any alleged loss is purely pecuniary and compensable by damages, and that she is capable of satisfying any decree.
17. In conclusion, the Defendants urge the Court to find that the application is unmerited, speculative, and an abuse of the court process, and to dismiss it with costs.

Analysis and determination

18. The issue that arise is whether the applicant has meet the threshold for granting the orders sought.
19. The Halsbury Laws of England 3rd Edition Vol. 3 [1] page 329 to 331 defines a *Mareva* injunction as:

“An order of the court restraining a party to proceedings from removing from the jurisdiction of the court, or otherwise dealing with assets, located within that jurisdiction and in more limited circumstances from dealing with assets located outside, the jurisdiction.”
20. The principles governing *Mareva* injunctions are now well settled.

“The grant of a freezing injunction is governed by principles quite distinct from those laid down for ordinary interim injunctions...Before granting a freezing injunction the court will usually require to be satisfied that;

 - a. The claimant has ‘a good arguable case’ based on a pre-existing cause of action;
 - b. The claim is one over which the court has jurisdiction;
 - c. The defendant appears to have assets within the jurisdiction;
 - d. There is a real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted; and
 - e. There is a balance of convenience in favour of granting the injunction,
 - f. The Court can also order disclosure of documents or the administration of requests for further information to assist the claimant in ascertaining the location of the defendant's assets”.

(See *International Air Transport Association & Another v Akarim Agencies Company Limited & 2 Others* [2014] eKLR).



21. In *Uhuru Highway Development Ltd V Central Bank of Kenya & 2 Others*, [1996] eKLR it was observed that courts have maintained that the primary objective of a Mareva injunction is to prevent a defendant from disposing of assets in a manner that would render any eventual judgment ineffectual. It is a remedy rooted in the need to preserve the enforceability of judicial determinations and to guard against the deliberate frustration of justice.
22. The Plaintiff's case is anchored on alleged unauthorized transfers of substantial sums from its payroll to the Defendants' accounts. The material placed before the Court discloses a discernible trail of funds said to have been remitted over a period of time.
23. The 1st Defendant, who was in a fiduciary position as Finance Manager, has not provided a satisfactory explanation for the alleged transfers. That omission, when considered alongside the uncontroverted fact that the 2nd and 3rd Defendants were not employees of the Plaintiff, raises serious and weighty questions that can only be conclusively resolved upon full trial.
24. On the issue of dissipation, the Court is entitled to infer risk from the nature of the alleged conduct. "It is not enough for the Plaintiff to assert a risk that the assets will be dissipated. He must demonstrate this by solid evidence. This evidence may take a number of forms. It may consist of direct evidence that the defendant has previously acted in a way which shows that his probity is not to be relied on. Or the plaintiff may show what type of company the defendant is (where it is incorporated, what are its corporate structure and assets, and so on) so as to raise an inference that the company is not to be relied on. Or, again, the plaintiff may be able to found his case on the fact that inquiries about the characteristics of the defendant have led to a blank wall. Precisely what form the evidence may take will depend on the particular circumstance of the case. (See *Imperial Bank Kenya Limited -v- Janco Investments Limited & 10 others* [2018] eKLR).
25. In the present case, the alleged diversion of funds over a prolonged period, coupled with the absence of any credible explanation, constitutes a sufficient evidentiary basis upon which this Court may properly infer that there exists a real risk that the funds may not be readily recoverable.
26. The Defendants' contention that the accounts in question are already subject to freezing orders in pending criminal proceedings does not, in my view, disentitle the Plaintiff to civil relief. It is now settled that the existence of parallel criminal proceedings does not bar or preclude the institution or continuation of civil proceedings founded on the same facts.
27. I am therefore satisfied that the Plaintiff has demonstrated that, absent intervention by this Court, there exists a real and appreciable risk that the assets in question may be dissipated, thereby rendering any eventual decree nugatory.
28. The Plaintiff has, in the alternative, sought orders for security under Order 39 Rules 5 and 6 of the Civil Procedure Rules. It is trite that orders for attachment before judgment are drastic in nature and must be granted sparingly and only upon strict proof.
29. In this case, while the Plaintiff has established a prima facie claim, there is no specific or cogent evidence demonstrating that the Defendants are about to dispose of their assets, abscond the jurisdiction, or otherwise act with the intent to obstruct or delay execution of any decree that may ultimately be issued.
30. In the circumstances, and bearing in mind that the Court has already granted freezing orders, the alternative prayer for security would serve no additional practical purpose and is therefore declined.
31. The Plaintiff has further sought wide-ranging orders for tracing of funds and for a full account of all transactions involving the allegedly converted sums, including identification of third parties and



subsequent dispositions. Although framed as interlocutory relief, these prayers, in substance, raise issues that go to the core of the dispute and touch on the ultimate merits of the case.

32. In my view, such orders go beyond the scope of preservative relief and verge into the realm of final determination. Granting them at this stage would require the Court to make definitive findings on contested matters, which properly fall for determination upon a full hearing. Nonetheless, a limited order requiring the Defendants to render an account strictly confined to the impugned transactions is justified for purposes of preserving the evidentiary trail and safeguarding the efficacy of the orders herein.
33. In the result, I am satisfied that the Plaintiff's application dated 29th July 2025 is merited to the extent indicated.
34. Accordingly, I make the following orders:
 - a. An order is hereby issued freezing withdrawals, transfers, or any other dealings in the Defendants' accounts held at Mhasibu Sacco Society Limited, namely:
 - i. Account No. 0101-002-MHS04160 (1st Defendant);
 - ii. Account No. 0101-002-MHS04274 (2nd Defendant); and
 - iii. Account No. 0101-002-MHS06264 (3rd Defendant).
 - b. A freezing order is hereby issued in respect of the 1st Defendant's account at Standard Chartered Bank up to the sum of KES 22,179,943/-.
 - c. The Defendants shall, within fourteen (14) days render an account of all transactions relating to the impugned sums.
 - d. The alternative prayer for security is declined.
 - e. Costs of the application 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. M. Muriithi h/b for Mr. E. Makori for Plaintiff

Court Assistant: Lispa

