



English Press (Properties) Limited v Grand Quality Restaurant Limited (Commercial Case E490 of 2024) [2026] KEHC 6327 (KLR) (Commercial and Tax) (8 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E490 OF 2024**

JWW MONG'ARE, J

MAY 8, 2026

BETWEEN

ENGLISH PRESS (PROPERTIES) LIMITED PLAINTIFF

AND

GRAND QUALITY RESTAURANT LIMITED DEFENDANT

RULING

1. The Plaintiff has filed the Notice of Motion dated 22nd September 2025 under section 1A,1B & 3A of the *Civil Procedure Act*, Order 40 Rule 7 and Order 51 of the Civil Procedure Rules and sections 1A,1B and 3A of the *Civil Procedure Act* seeking to vacate and discharge the interim injunctive orders that was previously granted by consent of the parties on 6th February 2025. The application is supported by the affidavit of the Plaintiff's director, Leon Nyachae sworn on 22nd September 2025 and it is opposed by the Defendant through the replying affidavit of its director, Cyrus Wanjohi Kamunya, sworn on 22nd October 2025. The application was canvassed by way of written submissions which are on record and I have considered the same together with the pleadings and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

2. The primary issue for the court's determination is whether the consent entered into by the parties on 6th February 2025 ought to be set aside. The Defendant had filed an application dated 6th November 2024 seeking injunctive relief to restrain the Plaintiff from interfering with its quiet possession of the premises on the ground and 1st floor of Reata House, erected on L.R. No. 209/10169, along Accra Road, Nairobi.



3. The Plaintiff avers that on 6th February 2025, the parties compromised, and by consent, the court allowed the injunction on condition that the Defendant pays monthly rent of Kshs. 727,406.00 starting from 1st August 2024. The Plaintiff claims that the total rent due from 1st August 2024 to date is Kshs. 10,183,684.00 but the Defendant has only made sporadic payments totaling Kshs. 4,800,000.00 which is less than 50% of the rent due. That on 10th June 2025, the court directed the Defendant to file an affidavit proving rent payment, but no such affidavit has been filed and the Plaintiff claims the Defendant allegedly lied on that date by claiming it was paying rent. The Plaintiff states that by continuing to occupy the premises without full payment, the Defendant is denying the Plaintiff revenue from its own property that could be rented to other paying tenants.
4. In response, the Defendant denies failing to comply with the consent order and it claims the allegation that it is not paying rent is false and malicious. It avers that it has forwarded evidence of payment to the court and that specifically, by a letter dated 2nd July 2025 addressed to the Deputy Registrar, it submitted payment evidence and that it had made further payments after July 2025. The Defendant states that the amount owed is an accounting issue to be determined at the full hearing, not grounds to vacate an injunction and it asserts that the Plaintiff's claim that the court fixed rent as a condition for the consent order is false and misleading. It states the issue of rent payment was raised in June 2025 long after the 6th February 2025 consent order.
5. The Defendant claims the Plaintiff has failed to account for certain amounts already paid, as well as costs incurred by the Defendant for securing the premises from a previous tenant. It avers that these amounts should have been reimbursed or converted to rental consideration, which has not been done but that despite this, it has continued to pay substantial rent. The Defendant claims that the Plaintiff's present application is intended to scuttle the hearing, try the suit in tranches and take away the substratum of the suit and that the grounds raised do not meet the legal threshold for discharging or varying consent orders. It reiterates that the issue of how much rent is payable and the accounting for amounts spent but not converted to rent were already raised in the Defendant's application of 6th November 2024. As such, the Defendant urges the court to dismiss the Plaintiff's application with costs.
6. The parties are in agreement that the principles of setting aside a consent order are well established in this jurisdiction and they have cited various decisions in support of the same. In *Brooke Bond Liebig v Mallya* [1975] EA 266 [1975] EA 266 Mustafa Ag. VP expressed the following principle as follows;

The compromise agreement was made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.
7. In *Wasike v Wamboko* [1985] KECA 149 (KLR) Hancox JA cited Setton on Judgments and orders (7th edition) vol 1 page 124, and reiterated that;

“Any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and those claiming under them... and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy



of the court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable a court set aside an agreement.”

8. And in *Kenya Commercial Bank Ltd v Specialized Engineering Company Ltd* [1980] KEHC 11 (KLR) Harris J correctly held *inter alia*, that –

“A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.

A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”

9. From the above, a consent order can only be set aside on the narrow grounds of fraud or collusion, an agreement contrary to public policy, lack of consensus, consent given without sufficient material facts or in misapprehension/ignorance of material facts and any other reason that would enable a court to set aside a contract such as a mistake, duress, undue influence. The Plaintiff has not alleged fraud or collusion in its pleadings or submissions. It simply claims the Defendant failed to comply with the consent order by not paying rent. Non-compliance with a consent order is not a ground for setting it aside but a ground for execution or enforcement proceedings.
10. It has not been disputed that the consent order was recorded in clear terms on 6th February 2025 in the presence of both counsel. The Defendant has argued and the Plaintiff has not disputed that the consent order did not contain any condition regarding payment of rent from August 2024. Crucially, the Plaintiff failed to annex the actual consent order to its application and without the order, the court cannot verify whether a rent condition was actually included. The Defendant maintains that the issue of rent was only raised later, in June 2025, months after the consent was recorded and this position has not been challenged.
11. As I have stated, the proper remedy for breach of a consent order is not to set it aside, it is to apply for execution of the order or apply for contempt of court proceedings or proceed to hearing the main suit. Setting aside a consent order erases it entirely which is disproportionate and inappropriate when the real complaint is non-compliance. The Plaintiff deponed that the court granted it liberty to apply in the event of non-compliance. In my view, this clause allows the Plaintiff to return to court for directions or enforcement, not to vacate or discharge the consent order itself and it would appear that the Plaintiff has conflated “liberty to apply” with a right to set aside, which is legally incorrect. The Defendant has raised genuine factual disputes including whether rent was ever a condition of the consent order, whether the Plaintiff has failed to account for amounts paid, whether costs incurred by the Defendant should be offset against rent and whether the Defendant has, in fact, made substantial payments as claimed. The Defendant annexed a letter dated 2nd July 2025 to the Deputy Registrar attaching evidence of payment and it also annexed further payment evidence post-July 2025. The Plaintiff did not challenge the authenticity or sufficiency of this evidence and its own deposition admits the Defendant has paid Kshs. 4,800,000.00 which is not zero and contradicts the earlier allegation of there being no payment. In any case, these are not matters for an interlocutory application as they require evidence and a full hearing.



Conclusion and Disposition

12. In summary, it is my finding that the Plaintiff has not satisfied the grounds to set aside the consent order and its application dated 22nd September 2025 is hereby dismissed with costs. The interim orders of the court issued on 30th September 2025 are hereby discharged with the consequence that the Defendant’s application dated 1st October 2025 is allowed.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF MAY 2026

.....

J.W.W. MONGARE

JUDGE

In The Presence Of

Mr. Chege for the Applicant

Mr. Wachira holding brief for Mr. Kingara for the Respondent

Amos- Court Assistant

