REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

COMM. CASE NO. E306 OF 2025

BETWEEN

PRINTING SERVICES LIMITED.....PLAINTIFF

AND

THE JOMO KENYATTA FOUNDATION.....1ST DEFENDANT

MINISTRY OF EDUCATION.....2ND DEFENDANT

RULING

Introduction and Background

1. The Plaintiff filed the present suit by way of a plaint dated 30th April 2025 claiming that the 1st Defendant("the Defendant") owes it Kshs. 109,498,352.37 for printing services lawfully rendered. The Plaintiff claims that the Defendant has unequivocally admitted this debt in writing through a letter dated 13th January 2025, but has failed, refused, or neglected to pay. Contemporaneously with the plaint, the Plaintiff has also filed the Notice of Motion of even date seeking an order that the Defendants be compelled to deposit the

full Kshs. 109,498,352.37 in court or an escrow account pending the hearing of the suit and a temporary injunction restraining the Defendants from

implementing any decision to dissolve, wind up, or divest the Defendant.

2. The application is supported by the affidavits of the Plaintiff's director, Dhillon Malkiat Singh sworn on 30th April 2025 and 24th June 2025. It is opposed by the Defendant through its Managing Director, David Kamau Mwaniki, sworn on 4th June 2025. When the application was filed, the court granted *ex parte* injunction orders on 4th May 2025 prompting the Defendant to file the Notice of Motion dated 4th June 2025 seeking to set aside those orders. This application is supported by David Kamau Mwaniki's affidavit sworn on 4th June 2025 and it is opposed by the Plaintiff through the replying affidavit of Dhillon Malkiat Singh sworn on 24th June 2025. The two applications were canvassed by way of written submissions that I have considered together with the pleadings and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

3. The main issues for determination are whether the court ought to grant the injunctive order sought by the Plaintiff and whether the Defendant should deposit the sum of Kshs. 109,498,352.37 as a condition for defending this matter. As submitted by the parties, the principles for granting an interlocutory injunction are well settled. The Plaintiff must demonstrate that it has a prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in its favour (see **Giella v Cassman Brown & Co., Ltd. [1973] E.A. 358).** In **Nguruman Limited v Jan Bonde Nielsen& 2 others [2013] KECA 347 (KLR),** the Court of Appeal reiterated these conditions and further clarified that they are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. This means that if the applicant does not establish a prima facie case, then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions.
4. As to what constitutes a prima facie case, the parties have also rightly submitted that the Court of Appeal in **Mrao Ltd v First**

American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR) explained that 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 to call for an explanation or rebuttal from the latter."* The Plaintiff's case is that the Defendant's failure to pay is causing serious financial strain, impairing the Plaintiff's ability to pay employees and sustain operations. That the Government of Kenya, through a Cabinet Memo dated 21st January 2025, has proposed the dissolution/divestiture of the Defendant and if the Defendant is dissolved before paying, the Plaintiff will have no legal entity to sue for recovery, rendering any future judgment useless.

5. The Plaintiff submits it has established a prima facie case because the debt is admitted in writing as evidenced by a letter from the Defendant dated 13th January 2025 and that the Defendant has engaged in other financial transactions while ignoring this debt. That the continued refusal to pay violates the Plaintiff's constitutional rights under **Article 47** on the right to fair administrative action and **Article 10** on the principles of fairness and good governance. The Plaintiff argues that without the court's

intervention, it will suffer irreparable harm that cannot be compensated by damages because the Defendant's imminent dissolution means assets and liabilities may be dissipated, reassigned, or written off and the Plaintiff's business is already in financial distress, losing goodwill and disrupting contracts with third parties.

6. In response, the Defendant admits the debt is owed but argues the orders sought are premature and illegal and argues that compelling a State Corporation to deposit money in court/escrow violates the constitutional principles of the ***Public Finance Management and the State Corporations Act(Chapter 446 of the Laws of Kenya),*** because all expenditures must be approved by the National Treasury and Cabinet Secretary. The Defendant also argues that the ***Government Proceedings Act*** insulates government entities from injunctive orders and attachment of debts.
7. The Defendant does not deny owing the Kshs. 109,498,352.37, however, it states that due to a change in government policy, it has transitioned from a commercial publishing entity to a scholarship coordination body, leading to a drastic revenue decline and it claims it cannot pay because it now relies entirely on Treasury

funding and is awaiting a government bailout. It contends that granting the order depositing the claimed sum in court would be akin to executing a decree before judgment and that this would cripple the Defendant's operations if frozen or deposited. That the 2nd Defendant also operates on a budget cycle and cannot incur unapproved expenditure.

8. The Defendant further depones that the injunctive order is premature because the dissolution process has not yet commenced and that under the ***Companies Act***, dissolving a company limited by guarantee requires a 90-day public notice by the Registrar of Companies. That by law, all debts and liabilities must be settled in full before dissolution can occur and the National Treasury remains liable for settling debts post-dissolution. The Defendant contends that even if the Plaintiff wins the case, it can recover the judgment sum through the ***Government Proceedings Act*** so there is no need for the drastic orders sought now. For these reasons, the Defendant urges the court to dismiss the Plaintiff's application in its entirety,
9. While the Plaintiff has an admitted debt letter dated 13th January 2025, the Defendant has raised a defence of non-compliance with public procurement laws. It has submitted that mandatory public

procurement procedures were not followed and therefore any alleged contract between the Plaintiff and the Defendant could be void and unenforceable. This court has held under the ***Public Procurement and Asset Disposal Act***, a contract entered into without following the prescribed competitive bidding process is generally void and cannot be the basis for a claim and a mere admission of debt cannot cure an illegality in the formation of the contract (see **Grana Limited v National Social Security Fund [2022] KEHC 61 (KLR)].** The Plaintiff has not annexed any purchase order, tender document, or signed contract to prove the procurement process was lawful and the Plaintiff's Further Affidavit focuses on the admission of debt but ignores the procurement issue. Because the Defendant has raised a credible defence that the contract itself may be void for illegality, the Plaintiff has failed to establish a prima facie case with a probability of success. On this ground alone, under ***Nguruman Limited(supra)*** the court can stop its analysis and dismiss the application but for completeness, I will consider the other factors.

10. The Defendant has argued and submitted and it has not been challenged that that under the ***Companies Act***, a 90-day public notice is required before dissolution, and all debts and

liabilities must be settled in full before dissolution can conclude. The Plaintiff's apprehension that the debt will vanish is speculative and incorrect as it has not disputed that the National Treasury assumes the liabilities of dissolved state corporations. The Plaintiff may face delay, but not extinguishment of the debt and delay does not constitute irreparable harm.

11. Further, the balance of convenience strongly favours refusing the injunction. The Cabinet Memo of 21st January 2025 annexed by the Plaintiff outlines a broad policy to reform 271 State Corporations. In my view, granting an injunction to a single creditor would paralyze legitimate public policy and open the floodgates for dozens of other creditors of the other entities slated for dissolution as submitted by the Defendant. The Defendant has also demonstrated it is financially distressed as evidenced by the 2nd Defendant's letter to the National Treasury indicating that revenue dropped from Kshs. 1.3 billion to Kshs. 121 million. Compelling the Defendant to deposit Kshs. 109 million in escrow would effectively shut it down before any dissolution process begins.

12. However, let me state that the Defendant's reliance on **Order 29 Rule 4** and the ***Government Proceedings Act*** is misplaced when applied to a State Corporation like the

Defendant because this court has always held that a state corporation is not "government" or a "government department" as envisaged by the ***Government Proceedings Act*** and that it is an independent agent of Government, formed by government in order to undertake and perform certain functions on behalf of government, which functions cannot adequately or efficiently be performed within the structure of Government Ministries (see **Greenstar Systems Limited v Kenyatta International Convention Centre (KICC) & 2 others [2018] KEHC 2360 (KLR)** and **Kimoi Ruto & another v Samwel Kipkosgei Keitany & another [2014] KEELC 410 (KLR).** Therefore, an injunction can be issued against the Defendant because it is not "Government", just not in this case.

Conclusion and Disposition

13. In the foregoing, I find that the Plaintiff's application dated 30th April 2025 has no merit and it is dismissed but with no order as to costs. The Defendant's application dated 4th June 2025 is allowed with the consequence that the interim orders of the court issued on 4th May 2025 are hereby discharged but with no order as to costs.

DATED SIGNED AND DELIVERED virtually at NAIROBI this

8th DAY of MAY 2026

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J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF

1. Mr. Ndungu holding brief for Mr. Wachira for the Plaintiff
2. N/A for the Attorney General
3. Amos- Court Assistant