



Axel Motors Centre Limited v Lamu Marine & Allied Products Limited (Land Case Appeal E043 of 2024) [2025] KEELC 908 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE APPEAL E043 OF 2024
SM KIBUNJA, J
FEBRUARY 27, 2025**

BETWEEN

AXEL MOTORS CENTRE LIMITED APPELLANT

AND

LAMU MARINE & ALLIED PRODUCTS LIMITED RESPONDENT

RULING

[Notice Of Motion Dated 26th November 2024]

1. The appellant filed the application dated the 26th November 2024 seeking for inter alia conservatory order of injunction restraining the respondent from entering or remaining or trespassing upon or evicting the appellant from the premises standing on L.R No. 143/XV/MI, pending the hearing and determination of this appeal. The application is based on the nine (9) grounds on its face marked (a) to (i), and supported by the affidavit of Khalfan Said Iddi, appellant's general manager, sworn on the 26th November 2024, in which he inter alia deposed that in January 2023, the appellant leased the showroom erected on the suit property from Ramson International Limited; that its employee was arrested on 7th June 2024, and taken to Makupa Police Station pursuant to a false report made by the respondent; that the respondent hired goons to violently invade the premises, and unlawfully evict the appellant; that the appellant filed a suit seeking for injunction against the respondent that was struck out on 4th November 2024, prompting this appeal; that on the 22nd November 2024, Mohamed Madhubuti, a director of the respondent, stormed the suit property with goons, and police officers from Central Police Station, assaulted Ahmad Mohamed, appellant's Sales Executive, looted goods and cash, damaged vehicles on display, defaced the building, signage and doors, while attempting to evict the appellant without a court order.
2. The application is opposed by the respondent through the replying affidavit of Mohamed Madhubuti, a director of the respondent, sworn on the 3rd December 2024, in which he inter alia deposed that the respondent refused to grant the appellant a lease, and the appellant want the court to force it to



grant the lease; that the respondent evicted the appellant on 22nd November 2024, and injunction order sought cannot issue to stop what has already happened; that the judgement in the Court of Appeal in E029 OF 2021 confirmed the suit property belongs to the respondent; that the appellant and Ramson Motors Limited, which was a party in Civil Appeal No. E029 of 2021, shared one of their directors, and want to retain the suit property through their other company, Axel Motors Limited; that this court cannot set aside or alter the orders of the Court of Appeal; that the court should strike out the appellant's Memorandum of Appeal with costs.

3. During the mention of 4th December 2024, the counsel for the appellant requested for time to file and serve a supplementary affidavit and submissions. The learned counsel for the respondent submitted that they had filed a lengthy replying affidavit that was sufficient, as the Court of Appeal had already made a decision on the matter. He however indicated they would file submissions in seven days after service if the leave sought to file supplementary affidavit by appellant was granted. The court directed that the appellant do file and serve supplementary affidavit and submissions in seven days and the respondent to file theirs in seven days after service. Thereafter, the counsel for the appellant filed their submissions dated the 10th December 2024, which the court has considered.
4. The court has carefully considered the ground on the application, affidavit evidence by the parties, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following determinations:
 - a. The court has noted that the respondent's disposition that the issue of ownership of the suit property was settled in Court of Appeal in Civil Appeal No.E029 of 2021 has not been challenged by the appellant. The appellant has also not disputed the respondent's further disposition that the appellant shares a common director with Ramson Motors Limited, and that the appellant purported landlords are Zain Abubakar Mohamed Al Zubidi and Ali Abubakar Mohamed, who were both involved in E029 of 2021.
 - b. I have perused the order attached to the replying affidavit in Court of Appeal Civil Appeal No. E029 of 2021 issued on 12th January 2024, and noted at order (h), it was ordered as follows;
 - i. We order rectification of the register to cancel all entries relating to the charge and further charge of the suit property to the bank and all subsequent transfers and entries so as to restore the title of the property to the company, Lamu Marine and Allied Products Limited.I have also noted that Lamu Marine and Allied Products Limited, who is the respondent herein, and Zain Abubakar Mohamed Al Zubidi were the 2nd and 6th respondents respectively, in the Court of Appeal Civil Appeal No.E029 of 2021.
 - c. From the facts presented before the court, there is no evidence to suggest that Axel Motors Centre Limited, the appellant herein, and Lamu Marine & Allied Products Limited, the respondent herein, had any contract/lease over the suit premises that is situated on the suit property, whose ownership was settled in Court of Appeal Civil Appeal No.E029 of 2021.
 - d. In the case of *Patricia Njeri & 3 Others versus National Museum of Kenya* [2004] eKLR, the court restated the principles the courts should consider in applications for temporary injunctions pending appeal as follows:
 - i. An order of injunction pending appeal is a discretion, which will be exercised against an applicant whose appeal is frivolous.



- ii. The discretion should be refused, where it would inflict great hardship than it would avoid.
- iii. The applicant must show that to refuse the injunction would render the appeal nugatory.
- iv. The court should also be guided, by the principles in *Giella versus Cassman Brown* [1973] E.A 358.

While this court is aware it does not need to make any final determinations on the issues of facts and law presented at this interlocutory stage, it is not disputed that the appellant's claim over the premises on the suit property is not based on any privity of contract between the parties herein. The appellant has also not claimed any proprietary rights or interest on the suit property upon which the premises in dispute is situated.

- e. With the foregoing in mind, then I find the appellant has not satisfied the test of prima facie case. The appellant has also not shown what irreparable loss, if any, that it would sustain if the order sought was not issued. The loss the appellant would be exposed to, if the order was not granted, could easily be established and an appropriate award made. That as the title to the property upon which the suit premises is situated rests with the respondent, the balance of convenience tilts against issuing the order sought. As the order sought by the appellant is discretionary, and the court has found a financial award would be sufficient if the appellant was eventually successful, declining to issue the injunction order will not render the appeal herein nugatory. I therefore find no merit in the application.
 - f. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the events, unless where the court for good reasons order otherwise. In this instance, I find it fair and just to order the costs in the application to abide the outcome of the appeal.
5. In view of the foregoing conclusions, I find and orders as follows:
- a. That the appellant's notice of motion dated the 26th November 2024 is without merit and is hereby dismissed.
 - b. The costs in the application to abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 27TH DAY OF FEBRUARY 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Appellant: Mr Mutubia

Respondent: No Appearance

Shitemi – Court AssistanT.

S. M. KIBUNJA, J.

ELC MOMBASA.

