



REPUBLIC OF KENYA



KENYA LAW
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**Kirimi v Imenti Tea Factory Ltd (Civil Appeal E056 of 2024)
[2025] KECA 1350 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1350 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MERU
CIVIL APPEAL E056 OF 2024
SM GITHINJI, J
JULY 25, 2025**

BETWEEN

PATRICK GITONGA KIRIMI APPLICANT

AND

IMENTI TEA FACTORY LTD RESPONDENT

RULING

1. For determination is the Notice of Motion dated 25/4/2025 pursuant to Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 40 Rules 1, 2, 3 and 4 and Order 50 Rule 1 of the [Civil Procedure Rules](#), seeking that:
 1. Spent
 2. Pending the hearing and determination of this Application, the Honorable Court be pleased to issue a temporary order suspending and staying the continued implementation of the Respondent's letter dated 13th June, 2023 deactivating the Applicant's Tea Grower Registration Numbers IM063 0344 and IMO61 0166.
 3. Pending inter partes hearing and determination of this Application, the Honorable Court be pleased to issue a temporary order compelling the Respondent to reactivate the Applicant's Tea Grower Registration Numbers IM063 0344 and IMO61 0166 together with all the appurtenant benefits and rights.
 4. Costs of this Application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of the Appellant/Applicant sworn on even date. He averred that he was the registered green leaf owner by the Respondent vide Registration Nos. IM 063 0344 and IMO061 0166, and he began delivering produce to the Respondent upon registration. By a letter dated 13/6/2023,



the Respondent's manager informed him that his aforementioned registration numbers had been deactivated on allegations of suspected falsification of his delivery records in their system. He promptly responded to the letter with evidence of his production and the number of his tea bushes, and the Respondent promised to verify the information contained in his said response within 14 days. The Respondent never reverted, which necessitated the filing of Civil Case No. E070/2023, where interim stay orders were issued. However, the Respondent raised a preliminary objection that the trial court lacked jurisdiction to hear and determine the dispute, which objection was upheld and the suit struck out with costs. Aggrieved by the said ruling, he has appealed to this court, and he continues to suffer substantial loss. He contacted the Respondent with a view of reactivating the said numbers in order to mitigate the said loss, to no avail. He urged the court to allow the application pending the determination of the appeal, in order to alleviate his suffering.

3. The Respondent opposed the application through a replying affidavit sworn by Francis Wamae, its manager on 20/6/2025. He asserted that the application was mired in fabrications, misrepresentations of the record and material nondisclosure. After the discovery of fraud and extremely abnormal productivity of green leaf, the Appellant's numbers were deactivated pending thorough investigations. The Appellant lodged this case in bad faith and in clear disregard of the dispute resolution mechanism as envisaged by the KTDA Management Services (KTDA MS), thus warranting the current stand by the Respondent. The court is bound to uphold the terms of an agreement between parties, as stated in *National Bank of Kenya v Pipeline Samkolit (K) Ltd & Another* (2001) eKLR. The suit is ill-advised because the Appellant did not exhaust the set-up dispute resolution mechanisms, and cited *John Shantilal Malde & 9 Others v Transmara Investment Limited & 2 Others* (2021) eKLR and *Southern Shield Holdings Limited v Tandala Investment Company Limited & 2 others* (2018) KEHC 1273 (KLR). The Appellant is inviting the court to decide an application whose import is to resolve the entire dispute and the entire appeal.
4. The Respondent further relied on its grounds of opposition.
5. The application was canvassed by way of written submissions, which were duly filed by counsel.

Determination

6. Having considered the application, the response thereto, and the submissions on record together with the authorities relied on, I find the issue for determination to be whether the threshold for the grant of the temporary injunction has been met.
7. The application is predicated on Order 40 Rule 1 of the *Civil Procedure Rules*, which provides 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."
8. The conditions for grant of temporary injunction were set out in the locus classicus case of *Giella v Cassman Brown* [1973] EA 358 as follows; "An applicant must show a prima facie case with probability of success, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, when the court is in doubt, it will decide the application on the balance of convenience."



9. Whereas the Appellant contends that the actions of the Respondent have occasioned him great suffering, the Respondent maintains that the Appellant flouted the laid-down dispute resolution mechanism, and he is thus undeserving of the orders sought.
10. What is sought by the Appellant is reactivation of his tea grower Numbers so that he can continue to supply tea leaves to the Respondent, pending the ultimate determination of the appeal. In my considered view, the Appellant's anticipated loss can be quantified and compensated by an award of damages, if, in the eventuality of a successful appeal, it is established that the deactivation of his said numbers was erroneous and unlawful.
11. I find that the Appellant has failed on the test of *Giella v Cassman Brown* (1973) EA 358, to establish that he has a prima facie case with probability of success and that damages would be inadequate compensation in case he succeeds on appeal, in order to succeed in this application.
12. The upshot from the foregoing analysis is that the application dated 25/4/2025 is in want of merit, and it is accordingly dismissed.

DATED AND DELIVERED AT MERU THIS 25TH JULY, 2025

S.M. GITHINJI

JUDGE

Apperances:-

Parties absent.

They be notified.

S.M. GITHINJI

JUDGE

