



**Conrad Law Advocates LLP & another v Jinnah; Jinnah & 2 others (Interested Parties)
(Cause E 942 of 2024) [2025] KEELRC 373 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 373 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E 942 OF 2024
BOM MANANI, J
FEBRUARY 13, 2025**

BETWEEN

CONRAD LAW ADVOCATES LLP 1ST CLAIMANT

CONRAD MALOBA T/A CONRAD MALOBA & ASSOCIATES 2ND CLAIMANT

AND

NAZIR BHADURALLI NURMOHAMMAD JINNAH RESPONDENT

AND

SHIROZ JINNAH INTERESTED PARTY

KAYCIA NAZIR JINNAH INTERESTED PARTY

KIAN JINNAH INTERESTED PARTY

RULING

Background

1. The 1st Claimant avers that it is a Limited Liability Partnership carrying out law practice in Kenya. The 2nd Claimant contends that he is a sole practitioner of law.
2. The 2nd Claimant avers that he entered into a partnership which resulted in the registration of the 1st Claimant. He however contends that his practice as a sole practitioner remains active. And hence his inclusion in the suit as a standalone Claimant.
3. The Claimants contend that the Respondent was initially employed by the 2nd Claimant as an Office Manager and Head of Business Development with effect from January 2019. He however allegedly transited from being the 2nd Claimant’s employee into being an employee of the 1st Claimant where he continued to serve as Office Manager and Head of Business Development. The Claimants have



produced an official search from the Registrar of Business Names attached to their affidavit and marked “B” which speaks to this fact.

4. The Claimants contend that because of the trust they had in the Respondent, they allowed him the role of communicating with the 1st Claimant’s clients in order to foster its business. They have produced in evidence and marked as “C” the 1st Claimant’s Firm Profile which describes the Respondent as ‘Director – Business Development’.
5. The Claimants contend that because of the Respondent’s position as the 1st Claimant’s Office Manager and Business Development Manager, the 1st Claimant made him a signatory to its bank accounts. They contend that this was to enable the Respondent effectively discharge his mandate as Office Manager under the supervision of the 2nd Claimant, the Managing Partner of the 1st Claimant.
6. The Claimants aver that because of the Respondent’s position in the Law Firm, he owed them a fiduciary duty. They contend that they expected that the Respondent would discharge his duties diligently and in the best interest of the Law Firm.
7. The Claimants contend that contrary to their aforesaid expectations, they began receiving complaints from some of the 1st Claimant’s clients regarding misrepresentations made by the Respondent whilst working for the 1st Claimant. They contend for instance that the Respondent allegedly misrepresented that he had authority of some clients to oversee their legal matters.
8. The Claimants aver that following these complaints, they decided to carry out an audit of the 1st Claimant’s bank accounts where the Respondent was a signatory. These included accounts at Stanbic Bank PLC and DTB Bank Kenya Limited.
9. The Claimants contend that the audit revealed that the Respondent had transferred up to Ksh. 113,655,831.00 from the accounts without their knowledge and authority. They contend that the Respondent executed the illegitimate transfers by fraudulently lifting the signatures of the 1st Claimant’s partners and using them to execute debits from the affected accounts.
10. The Claimants contend that after the Respondent caused the illegal debits, he moved the funds into overseas accounts in the United Kingdom. Some of the overseas accounts are allegedly in the names of the Respondent’s wife and children who have been joined in the proceedings as Interested Parties. To support their aforesaid claim, the Claimants have produced several bank transfer forms marked “D” attached to their affidavit for the period between 2019 and 2022 through which the Respondent transferred money to the Interested Parties.
11. The Claimants contend that the audit revealed that the Respondent would divert funds deposited into the 1st Claimant’s accounts as clients’ funds or legal fees and credit his personal account. They further contend that after moving the funds into his personal account, the Respondent would then transfer the money into overseas accounts held in the names of the Interested Parties.
12. The Claimants contend that the 1st Claimant’s bank accounts required joint operation with at least two signatories as a security measure. However, the Respondent had allegedly fraudulently changed this requirement with the consequence that he was able to operate the accounts as a sole mandatee.
13. The Claimants contend that as a result of the foregoing, the Respondent was able to siphon millions of shillings from the 1st Claimant’s accounts. They have provided a table at paragraph 12 of their affidavit setting out the suspect transactions. They have also provided and marked as “F” in their affidavit, bank statements to demonstrate the impugned cash transfers.



14. The Claimants contend that after the above discovery, they reported the matter to the police. They have attached to their affidavit their letter to the Director of Criminal Investigations (DCI) dated 22nd May 2024 and a note from Kileleshwa Police Station dated 20th May 2024 to demonstrate that the matter was reported to the police.
15. In their letter to the DCI, the Claimants expressed their fear that the Respondent may have been planning to exit the country to evade jurisdiction. As such, they requested that he be investigated and charged in court. As well, they requested that the DCI sends out an alert to prevent him (the Respondent) from absconding from jurisdiction.
16. The Claimants contend that after they made the report to Kileleshwa Police Station on 20th May 2024, the Respondent left the jurisdiction of Kenya on 21st May 2024. They contend that he did so after he learned that the matter had been reported to the police.
17. The Claimants contend that they took steps to ascertain some of the assets which the Respondent may have acquired using the impugned funds. They contend that they discovered that the Respondent had acquired several vehicles using the funds to wit the following: KCX 555K, KBV 919X, KDH 252H, KCW 888G, KDM 356E, KBQ 512U, KCT 555V and KBN 900F. They further contend that the Respondent applied some of the funds to acquire immovable property number Kiambu/ Municipality/Block 6/233.
18. The Claimants further contend that some of the funds are still held by the Respondent in various bank accounts. These include: Stanbic Bank A/C Nos. 0100005861084, 0100005861076 and 0100005861092 all in the Respondent's name; DTB Kenya Limited A/C Nos. 5446617001 and 5446617002 both in the Respondent's name; ABSA Bank Limited A/C No. 2026797988 in the Respondent's name; and Nationwide Building Society A/C No. 14055174 in the name of the 1st Interested Party.
19. The Claimants aver that after leaving the country, the Respondent transferred some of his assets into the names of the Interested Parties in a bid to defeat efforts to recover the funds which he had allegedly embezzled from them (the Claimants). They have attached searches from the National Transport and Safety Authority in respect of a number of motor vehicles in an effort to support this assertion.
20. The Claimants have now filed the instant suit against the Respondent and Interested Parties in an effort to recover the disputed funds. Contemporaneous with the Statement of Claim, they have filed the application dated 4th November 2024 in which they seek various interim orders which are essentially meant to freeze the properties which the Respondent is suspected to have acquired using the impugned funds. As mentioned earlier, some of the assets are in the names of the Interested Parties.
21. The Claimants assert that the orders they seek through the application ought to issue in order to prevent the Respondent and Interested Parties from defeating execution of the decree they anticipate from this action. It is their case that unless the court issues the orders, the amount in dispute (Ksh. 113,655,831.00) will be lost as there will be no way of recovering it, the Respondent having left the court's jurisdiction.
22. The Respondent and Interested Parties (together, the Defendants for purposes of convenience) have opposed the application for preservation orders. They have done so through a replying affidavit dated 20th November 2024 sworn by the Respondent
23. The Defendants contend that the instant application is frivolous and full of contradictions. They contend that the Claimants have not disclosed material facts to the court.



24. The Respondent avers that his relationship with the 2nd Claimant began in the year 2009 when the 2nd Claimant was an employee of Dr. Khaminwa Advocate. He avers that the 2nd Claimant used to handle his files whilst working for Dr. Khaminwa.
25. The Respondent avers that after the 2nd Claimant left the Firm of Khaminwa Advocates, he approached him for office space to enable him set up his Law Firm. He contends that the 2nd Claimant teamed up with two other lawyers to set up Maloba & Amalemba Associates.
26. The Respondent avers that because he had ceded part of his office space to the 2nd Claimant, the two agreed that they will share office costs and general expenses. He further contends that the 2nd Claimant engaged him (the Respondent) as a financial and business consultant for the new Law Firm. The Respondent further avers that owing to the close relationship that developed between him and the 2nd Claimant, he occasionally referred clients to the 2nd Claimant.
27. The Respondent contends that after some time, he had a disagreement with the Law Firm on sharing of office costs and other expenses. As a result, he (the Respondent) quit the arrangement and set up his own office in a new location as from 2017.
28. The Respondent avers that the 2nd Claimant followed him to the new location and the two agreed to share the new office space he (the Respondent) had acquired subject to them jointly offsetting the office expenses. He further contends that the two agreed to continue with the consultancy arrangement they had entered into earlier.
29. Despite the above agreement, the Respondent contends that he appreciated that the 2nd Claimant was yet to settle in his trade. As such, he (the Respondent) continued to exclusively defray office expenses for the years 2018 and 2019. The Respondent avers that he incurred the cost of Ksh. 14,375,282.34 in setting up the new office and meeting expenses thereof for the two years.
30. The Respondent avers that the 1st Claimant was registered in 2021 after the 2nd Claimant entered into a partnership with another lawyer. He avers that he continued to provide financial consultancy services to the new outfit but denies that it engaged him as its employee. He contends that it is ludicrous for the Claimants to contend that he was their employee when it is him who offered the 2nd Claimant accommodation when he was starting his Law Firm.
31. The Respondent contends that he had a good relationship with the Claimants until 2023 when he began questioning their alleged dubious dealings and complaints against them by the clients he had referred to them. He contends that the 2nd Claimant had been referred to the Advocates Complaints Tribunal as a result of some of the alleged dubious dealings.
32. The Respondent contends that the 1st Claimant was registered to offer "Legal Consultancy" services. That he contributed to these consultancy services more than any of the partners in the Firm.
33. The Respondent contends that the Claimants have not provided any contract to evidence their assertion that he was their employee. He further contends that the Claimants cannot rely on the 1st Claimant's company profile to anchor their claim to employment.
34. The Respondent avers that at the time he was engaged to offer consultancy services to the 1st Claimant, he was a serving director of English Point Marina. As such, he contends that he could not have been engaged as an employee of the 1st Claimant at the time.
35. The Respondent insinuates that because the 2nd Claimant was allegedly facing complaints by clients relating to handling of their funds, he has no moral authority to accuse him (the Respondent) of



breach of fiduciary duty. The Respondent contends that whoever comes to equity must come with clean hands.

36. The Respondent contends that as a founder member and shareholder in the consultancy services run under the umbrella of the 1st Claimant, he has a stake in its operations. He contends that he was made a signatory to the 1st Claimant's bank accounts in recognition of this fact.
37. The Respondent contends that the Claimants have not presented to court the alleged audit report in respect of the 1st Claimant's bank accounts because none was conducted. As such, he views these proceedings as a scheme to frustrate him and his family.
38. The Respondent avers that all the impugned transactions were effected through cheques which were signed by the 1st Claimant's partners. As such, he contends that the allegations that he lifted the partners' signatures are unfounded.
39. The Respondent contends that the payments he made to the Interested Parties were for settling family obligations such as: paying school fees; purchasing furniture; and upkeep of family. Further, he contends that some of the payments were made in 2019, long before the purported fraud.
40. The Respondent contends that as a dual citizen he cannot be accused of absconding Kenya's jurisdiction merely because he travelled to the United Kingdom where his is also a citizen. He further contends that nothing stops him from transferring funds to his family members who live in the United Kingdom, his other motherland. He contends that there is nothing unusual about him transferring money to settle his children's school fees and for his family's upkeep.
41. The Respondent avers that most of the vehicles which the Claimants assert are products of fraud were acquired in 2019 before the purported fraud. He contends that some of the vehicles mentioned by the Claimants are not known to him. He further contends that some of the vehicles such as motor vehicle registration KCW 888G belong to some of the Interested Parties and have no association with him.
42. The Respondent denies that he has transferred the impugned funds into the account of the 1st Interested Party. He contends that the Claimants have provided no proof of such transfers.
43. The Respondent contends that the Claimants have not tabled evidence to demonstrate that immovable property number Kiambu/Municipality Block 6/233 was acquired using the allegedly embezzled funds. However, it is noteworthy that he does not deny the Claimants' contention that the property is owned by him.
44. The Respondent contends that the accusations by the Claimants against him are meant to settle personal scores. He alleges that they are part of a scheme by the Claimants to ensure that they block his efforts to pursue his input in the 1st Claimant. He contends that the Claimants want his accounts frozen so that when he is apprehended on fabricated charges, he is not able to raise funds for bail.
45. The Respondent wonders why the 1st Claimant's bankers have not refunded it (the 1st Claimant) the impugned funds if it is true that they (the funds) were fraudulently removed from its account. He contends that in normal banking practice, if a bank irregularly pays out money from an account, it reimburses the affected client. It is his case that the fact that the 1st Claimant's banks have not done so speaks to the fact that its claims are spurious.
46. The Respondent believes that the only reason why the Claimants have dragged his family into the dispute is to intimidate him. He alleges that the move is meant to silence him from questioning the Claimants' conduct once he realizes that they can reach his family members.



47. The Respondent avers that he is the sole breadwinner of his family. As such, the orders sought against him are meant to incapacitate him and deny his family their means of sustenance.
48. The Respondent avers that there is no employment relation between the Interested Parties and himself on the one part and the Claimants on the other part. As such, he considers the instant action a commercial dispute disguised as an employment claim. Consequently, he contends that the suit is an abuse of the court process.
49. The Respondent avers that an order for security before judgment should only issue in exceptional cases where the applicant has a strong case. He contends that the order can only issue if the applicant has demonstrated that the defendant is moving his property outside the court's jurisdiction or dissipating them.
50. The Respondent contends that a court judgment is neither a charge on his assets nor a debenture nor preferential debt. As such, in the event the Claimants succeed in their case, they should enforce their decree through the normal execution process.
51. The Respondent avers that the preservation orders sought by the Claimants will subject him and his family to undue hardship as they will deprive them of their livelihoods. He contends that the interim reliefs which are in place have already caused him untold financial embarrassment.
52. The Respondent contends that failure to issue the orders in question will not prejudice the Claimants. He contends that if it is true that the Claimants lost the impugned funds through fraud, their bankers have a duty to reverse the payments and credit their accounts with the funds allegedly lost.
53. The 2nd Claimant filed a supplementary affidavit dated 25th November 2024 to controvert the averments by the Respondent. He denies that the Claimants ever engaged the Respondent a financial consultant.
54. The 2nd Claimant contends that when the Law Firm of Maloba & Amalemba Associates Advocates begun expanding, it became necessary to move to a more ideal office. He contends that it is this reality that informed their decision to move office around 2017.
55. The 2nd Claimant avers that the Law Firm tasked the Respondent to scout for office space for it and hence the new office to which they moved. The 2nd Claimant denies that there was an agreement that the Respondent would share office space with the Law Firm.
56. The 2nd Claimant contends that shortly after the Firm of Maloba & Amalemba Associates Advocates relocated to the new office, it was dissolved. As a result, he concluded the tenancy agreement with the new Landlord in his personal capacity. He has produced a copy of the tenancy agreement.
57. The 2nd Claimant avers that after dissolution of Maloba & Amalemba Associates Advocates, he entered into a partnership with another lawyer. Subsequently, the two registered the 1st Claimant as a Limited Liability Partnership. He has produced a copy of the Partnership Deed.
58. The 2nd Claimant contends that the 1st Claimant was registered to offer legal services as required under the *Advocates Act*, Cap 16 Laws of Kenya. He contends that the registration was approved by the Law Society of Kenya as required by law.
59. The 2nd Claimant contends that it is a requirement under the *Limited Liability Partnership Act*, Cap 30 Laws of Kenya that every registered partnership appoints an individual who will serve as manager of the entity. He contends that it is with the intent to comply with this requirement and clause 13 of the Partnership Deed that the 1st Claimant appointed the Respondent as its manager and administrator.



60. The 2nd Claimant has provided a statement of particulars filed with the Registrar of Partnerships. It shows that the 1st Claimant had two partners, Conrad Anangwe Maloba and Ndeda Nick. Further, it shows that the Respondent was appointed as a manager of the Firm.
61. The 2nd Claimant avers that the decision to appoint the Respondent as the 1st Claimant's manager was informed by the desire to use him to market the Law Firm. He contends that in his role as manager and head of business development, the Respondent indeed successfully marketed the Law Firm to a number of clients mainly within his Ismaili community.
62. The 2nd Claimant contends that the 1st Claimant having been registered as a Law Firm was obligated to operate within the confines of the *Advocates Act*. As such, only the partners of the Law Firm were permitted to raise capital for the entity. In the premises, he denies the Respondent's contention that he contributed to the capital of the 1st Claimant.
63. The 2nd Claimant reiterates the contention that the Respondent was engaged by the 1st Claimant as its employee performing general office management, administrative and business development duties. He contends that part of the roles of the Respondent as office manager included: payroll administration; human resource management; petty cash administration; payment of office bills; and general office maintenance.
64. The 2nd Claimant has produced a series of email correspondence between the Respondent and some of the 1st Claimant's members of staff to anchor his contention that the Respondent's role was essentially one of office manager and business development. He points out that in most of the emails, the Respondent described himself as "Director, Business Development" of the 1st Claimant.
65. The 2nd Claimant contends that it is inconceivable for the Respondent to think that he could have been a co-owner of the 1st Claimant without the benefit of educational qualifications of an Advocate of the High Court of Kenya. He contends that only qualified lawyers are entitled to be partners in a Law Firm.
66. The 2nd Claimant contends that nothing turns on the fact that the Respondent was a director of another company at the time that he was engaged as manager of the 1st Claimant. He contends that the law does not proscribe such an arrangement.
67. The 2nd Claimant contends that the alleged misconduct which the Respondent accuses the Claimants of has nothing to do with the instant dispute. As such, nothing turns on it.
68. The 2nd Claimant contends that the Respondent was entrusted with various client funds after he represented to the Law Firm that he had the clients' instructions to receive the money for onward transmission to them. However, after collecting the funds, he failed to remit them to the affected clients. As a result, the clients began demanding for the money from the Claimants. The 2nd Claimant has provided email correspondence suggesting that there was something amiss with funds which had apparently been entrusted with the Respondent, a matter which appears to have attracted the attention of the Law Society of Kenya.
69. For example, the 2nd Claimant's email to the Respondent dated 20th May 2024 at 1.20 PM informs the Respondent that the Claimants had procured DTB Ltd bank statements and the documents had shocked them. The 2nd Claimant then goes further to demand that the Respondent gives them (the Claimants) money relating to three transactions whose particulars I have not set out in this ruling for reasons of confidentiality (see page 76 of the bundle containing the Claimants' further affidavit).
70. The 2nd Claimant contends that the demands for money by some aggrieved clients were in writing. He refers to an email dated 3rd January 2023 at 10.22 PM by one of the clients addressed to the Respondent



to anchor this contention. In the email, the writer appears to be pleading with the Respondent to release funds for some transaction so that he (the writer) can remit them (the funds) to the beneficiaries (page 71 of the Claimants' bundle containing the further affidavit). The above email appears to have triggered further conversation about the impugned funds. For example, at page 74 of the same bundle, the 1st Claimant's other partner, Nick Ndeda, wrote to the Respondent on 15th May 2024 at 11.32 AM thus, "Dear Nasir, Please remit the.....money before it is too late".

71. The Claimants contend that after they received, demands from some of their clients that the funds (which they say the Respondent had taken) be paid out, they engaged the Respondent on the matter and asked him to avail the funds. However, he allegedly remained evasive on the matter.
72. The 2nd Claimant maintains that after the Respondent learned that they had referred the alleged fraud to the police, he fled from the country. The Claimants rely, inter alia, on the Respondent's email to his advocates dated 23rd May 2024 at 5.51 PM to anchor this contention. In the email, the Respondent wrote in part thus, "...Nick has become extremely aggressive with me and it appears that he wants to prefer charges of theft by servant in a criminal manner." (See page 103 of the bundle forming the Claimants' further affidavit).

Analysis

73. The court is alive to the fact that the instant application has been presented at the interlocutory stage of these proceedings. That being the case, the court is aware that it is not expected to wade into the controversy and purport to make final pronouncements on any of the contested issues. This is a task that must be left in abeyance until after the matter has been heard through a full trial. At this stage all that is expected of the court is to conduct a preliminary review of the material on record in order to determine whether the Claimants have a prima facie case against the Respondent.
74. The Respondent has contested the Claimants' assertion that he was an employee of the 1st Claimant at the time of the events which led to this action. He contends that he was a consultant for the 1st Claimant on finance and business development matters.
75. As indicated earlier, it is not appropriate for the court to conclusively determine such an issue at this moment in time particularly before the Respondent files a statement of defense expressing a definitive position on the subject (the time for filing a defense had not lapsed at the time of canvassing the application). All that it (the court) is required to do is to examine the material presented by both parties to determine whether, prima facie, they suggest existence of an employment relation between them.
76. In order to form a preliminary view on the subject, I will begin by examining the document which set up the 1st Claimant. This is the Partnership Deed which the Claimants produced as CM2 attached to their further affidavit. The Deed was drawn on 1st February 2021. It shows that it was made between Conrad Maloba Anangwe and Ndeda Nick as shareholders of the Firm.
77. The Respondent has contended that he was not an employee of the 1st Claimant but a founding partner and shareholder of the firm. However, the aforesaid Partnership Deed dispels this contention. If the Respondent was a founding partner and shareholder of the 1st Claimant, the Deed would have spoken to this fact.



78. The court notes that registration of the 1st Claimant received the approval of the Law Society of Kenya on 18th March 2021. Rule 4 of the Advocates (Practice) Rules provides as follows:-
- “No advocate may agree to share with any person not being an advocate or other duly qualified legal Agent practicing in another country his profit costs in respect of any business whether contentious or non-contentious.”
79. The above edict is based on section 37 of the Advocates Act which makes it an offense for an advocate to share profits with a non-qualified person. It provides as follows:-
- “Any advocate who agrees to share his profits in respect of any professional business, whether contentious or non-contentious, with any person not being an advocate or other duly qualified legal practitioner (by whatever name called) shall be guilty of an offence.”
80. The Claimants contend that the Respondent is not an advocate of the High Court of Kenya, a fact which he (the Respondent) has not denied. As such, they contend that they could not have entered into a partnership with him as this would have been contrary to the law.
81. I agree with the position expressed by the Claimants on the matter. The aforesaid rules are clear that an advocate cannot team up with a non-advocate to run legal practice. As such, the Respondent’s assertion that he was a founding partner and shareholder of the 1st Claimant cannot be correct.
82. If the Respondent purported to have entered into such an arrangement, then it was illegal. As such, it would not be enforceable.
83. The Respondent has contended that he was a consultant and not an employee of the 1st Claimant. However, the particulars supplied to the Registrar of Partnerships and on which he appended his signature describe him as a manager of the 1st Claimant. They do not describe him as a consultant with the 1st Claimant.
84. Section 27 of the Limited Liability Partnership Act provides that a limited liability partnership must have a person who acts as its manager. Section 2 of the Act describes the term “manager” as follows:-
- “manager”, in relation to a limited liability partnership, means a person who (whether or not a partner of the partnership) is concerned in, or takes part in, the management of the partnership (whether or not the particulars or consent of that partner to act as such are lodged with Registrar as required under section 27(2).”
85. Clearly, the manager of a limited liability partnership need not be a partner in the firm. He could be a mere employee.
86. Black’s Law Dictionary defines the term “manager” as follows:-
- “Someone who administers or supervises the affairs of a business, office or other organization.”
87. On the other hand, the Oxford English Dictionary describes the term “consultant” as follows:-
- “a person who provides expert advice professionally.”
88. The Respondent alleges that he was providing financial consultancy services to the Claimants. Yet, he has not presented preliminary material to demonstrate his expertise in finance matters. It is therefore



- doubtful, based on the preliminary material before the court, that he was a finance consultant for the Claimants.
89. Importantly, from the definitions set out above, a consultant, being an expert advisor, need not be present at the client's premises throughout. On the other hand, a manager, being one who supervises the day to day affairs of a business, is expected to be present at the business premise throughout its working hours. As such, a manager is more likely to be an employee of the organization in which he works.
 90. The Respondent has contended that at the time he was engaged by the Claimants, he was a serving director of another company. As such, it is not possible that he would have been in the employment of the 1st Claimant at the same time.
 91. I do not agree with this contention. In company law, a person serving as a director of a company is not considered as the company's employee by virtue of such directorship (*Rift Valley Water Services Board & 3 others v Asanyo & 2 others (Civil Appeal 60 & 61 of 2015 (Consolidated)) [2022] KECA 778 (KLR) (10 June 2022) (Judgment)*). He can only double up as an employee of the company if he has been so appointed under a separate employment contract. As such, nothing prevents a director of a company who is not doubling as its employee from being engaged as an employee of a different entity.
 92. The Respondent has also argued that the Claimants have not presented evidence to support their contention that he was the 1st Claimant's employee. By this, I understand him to be insinuating that the Claimants ought to have provided a written contract of service between him and the 1st Claimant as proof of his employment.
 93. This argument is flawed. Section 8 of the *Employment Act* acknowledges that a contract of service may be oral or written. As such, the fact that the 1st Claimant and the Respondent did not have a written contract of service is not evidence that the two did not have an employment relation.
 94. Finally on this matter, I have scanned through the email correspondence produced by the parties to the action. In some of them, the Respondent describes himself as the 1st Claimant's "Director-Business Development." This description is consistent with the Claimants' contention that the Respondent was engaged as the 1st Claimant's office manager and head of business development. As such and based on the above material, I reach the preliminary view that it is more likely than it is not that the 1st Claimant had employed the Respondent as its office manager and head of business development.
 95. The next question to determine is whether the orders sought by the Claimants in their application ought to issue. Again, on this aspect of the case, I need not at this preliminary level, make any conclusive pronouncements on matters that are in controversy and which require full trial for their conclusive determination.
 96. The Claimants have prayed for injunctive orders which are intended to preserve some properties pending resolution of the dispute. They have also sought orders for attachment before judgment. Both prayers can only issue if certain conditions have been satisfied.
 97. With respect to the request for interim injunction, an applicant must satisfy the conditions which were prescribed in the case of *Giella v Cassman Brown and Co Ltd [1973] EA 358*. He must demonstrate: that he has a prima facie case with a probability of success; that if the orders sought are not granted, he stands to suffer irreparable harm; and if the court is in doubt, it should decide the application on a balance of convenience.



98. What amounts to a prima facie case was described in the case of *Mrao v First American Bank of Kenya Limited & 2 Others* [2003] eKLR when the court expressed itself on the matter as follows:-

“...So what is a prima facie case? I would say that in civil cases 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 as to call for an explanation or rebuttal from the latter.”

99. In effect, a prima facie case is not a case which must necessarily succeed at the end of the trial. Rather, it is a case which on the face of it, points to the likelihood of one’s right having been infringed and which therefore calls for further interrogation by the court through a full trial.

100. Have the Claimants met the above threshold? I think yes.

101. The preliminary material before me demonstrates that the Respondent had interactions with the 1st Claimant’s bank accounts. The accounts were held by Stanbic Bank PLC and DTB Bank Kenya Limited.

102. The parties agree that the 1st Claimant had mandated the Respondent to operate the accounts in his capacity as its manager. However, the Claimants contend that the Respondent abused this trust when he diverted funds from the said accounts to his personal use.

103. The Claimants have provided bank transaction slips and statements which demonstrate that the Respondent withdrew money from the 1st Claimant’s bank accounts. These are to be found at pages 41 to 57 of the Claimants’ trial bundle.

104. The Respondent has contended that the drawings were in the ordinary course of business. He argues that the transactions were done with the approval of the 1st Claimant’s partners by way of signing the withdrawal cheques. As such, the drawings were not fraudulent.

105. The Respondent further argues that if the transactions were fraudulent, the 1st Claimant’s bankers would have reversed them and re-credited its account. He expresses this view on account of the fiduciary position that a bank holds towards its customers.

106. Despite the Respondent’s aforesaid contentions, there is preliminary evidence to suggest that there was something the matter with the way he handled the finances which came into his possession by reason of his employment with the 1st Claimant. For example, in the 2nd Claimant’s email to the Respondent dated 20th May 2024 (see page 76 of the bundle containing the Claimants’ further affidavit), he informs the Respondent that the Claimants had procured their DTB Ltd bank statements and were shocked at their content. The Claimants then demand that the Respondent gives them funds which were meant for three of the 1st Claimant’s clients.

107. It is noteworthy that one of the clients whose money the Claimants were demanding from the Respondent had written to the Respondent on 3rd January 2023 demanding payment for a transaction which the Respondent had allegedly overseen. At page 74 of the bundle containing the Claimants’ further affidavit is another email by one Nick Ndeda, the other partner in the 1st Claimant demanding that the Respondent remits money belonging to one of the 1st Claimant’s clients.

108. The Claimants have also produced WhatsApp conversations between the 2nd Claimant and the Respondent which point to discussions regarding funds which appear to have been in the Respondent’s possession by virtue of his position as the 1st Claimant’s employee. The conversations



suggest that the 2nd Claimant wanted the Respondent to return the funds which allegedly belonged to some of the clients mentioned in the email communication between the parties.

109. The totality of this evidence points to the fact that the Claimants and Respondent had disagreements relating to funds, some of which belonged to the 1st Claimant's clients. It is also apparent that the funds were in the custody of the Respondent who was being asked to remit them back to either the Claimants or their clients.
110. Based on this evidence, I arrive at the conclusion that the Claimants have established a prima facie case that the Respondent may have irregularly redirected funds which came into his possession by reason of his employment with the 1st Claimant. As such, the Claimants have satisfied the first condition for the grant of an interim injunction.
111. With regard to the second condition, I have considered the quantum of the funds in dispute. The Claimants place the amount that was allegedly lost as a result of the impugned transactions at Ksh. 113,655,831.00. They contend that part of the funds belonged to the 1st Claimant's clients and that the said clients were now demanding that they be paid.
112. I have also noted email correspondence between the partners of the 1st Claimant on the one hand and the Respondent on the other. From the correspondence, it is apparent that the dispute between the parties had become the subject of consideration by the Law Society of Kenya. This is apparent from the email correspondence at pages 74 to 76 of the bundle containing the Claimants' further affidavit.
113. Considering the colossal sum involved and the fact that the dispute has exposed the 1st Claimant's partners to the risk of disciplinary action by their regulatory body, it is clear to me that the two run the risk of suffering damage that may not be redressed by an award of damages should the subject matter of the suit not be preserved through an order of interim injunction. As such, I arrive at the conclusion that the Claimants have satisfied the second requirement for the grant of interim injunction.
114. As regards the balance of convenience, I hold the view that the Claimants having satisfied the first two conditions for grant of an interim injunction, the balance of convenience tilts in favour of issuing the said orders. As noted earlier in the decision, some of the funds in dispute appear to be the property of third parties (the 1st Claimant's clients). As such, failure to issue the orders will expose these individuals to the risk of total loss. It is therefore convenient to have the orders in place pending resolution of the dispute.
115. The Claimants having satisfied the conditions for interim injunction, the court is not in doubt as to whether the orders sought ought to issue. The only issue that remains for consideration is the extent the orders should cover.
116. The next question that the court has to consider is whether the orders for attachment before judgment should issue. As indicated earlier, before such orders can issue, the applicant must satisfy certain conditions.
117. In *Freight Forwarders Kenya Limited v Aya Investment Uganda Limited* [2013] eKLR, the court alluded to these conditions. Quoting the Court of Appeal decision in *Kuria Kanyoko t/a Amigos Bar and Restaurant Vs Francis Kinuthia Nderu & others* (1988) 2KAR 126, the court observed that the power to order attachment before judgment should not be exercised lightly. It should only be invoked in cases where there is evidence that the Defendant was about to dispose of his property or to remove it from the court's jurisdiction with intent to obstruct or delay any decree that may be passed against him.
118. In the instant case, the Claimants assert that the Respondent has not only absconded the court's jurisdiction but has also attempted to transfer some of his assets to the Interested Parties in a bid to



- frustrate their efforts to recover the funds he irregularly acquired from the 1st Claimant. They also contend that some of the funds were channeled to and benefited the Interested Parties. As such, the properties they hold should be frozen pending resolution of the case.
119. On his part, the Respondent denies that he left the country because he was attempting to abscond the court's jurisdiction. He argues that he is a dual citizen of the United Kingdom and Kenya. As such, his decision to move to the United Kingdom should not be construed as an attempt to abscond jurisdiction of the Kenyan court.
120. The Respondent avers that the Claimants have not placed before the court any evidence to point to the fact that he left the country in a bid to avoid the court's jurisdiction. As such, he asserts that their contention that he is attempting to abscond jurisdiction should be disregarded.
121. I have considered the contrasting positions expressed by the parties on the subject against the evidence on record. The Claimants say that they reported the alleged fraud by the Respondent to the police on 20th May 2024 and 22nd May 2024. They have provided evidence of these reports.
122. The Claimants contend that immediately the Respondent learned that the matter had been referred to the police and that investigations on it had commenced, he fled the country. On the other hand, the Respondent denies this fact.
123. Both parties agree that the Respondent is a dual citizen of Kenya and the United Kingdom. As such and all factors remaining constant, there would be no reason to accuse him of attempting to evade the court's jurisdiction merely because he decided to visit the United Kingdom. However, it is also true that the fact that the Respondent is a dual citizen does not necessarily mean that his decision to fly out to the United Kingdom was not in a bid to evade the court's jurisdiction. As such, the court has to scrutinize the circumstances surrounding his departure in order to determine whether they suggest that his decision to move to the United Kingdom was motivated more by the desire to avoid the court's jurisdiction than to merely visit his other motherland.
124. The Claimants have provided an email dated 23rd May 2024 which the Respondent wrote to his lawyers shortly after the Claimants had lodged a complaint with the police. The email, which appears at page 103 of the Claimants' bundle containing their further affidavit reads as follows:-
- “Dear Weta,
- We had discussed this instruction in your chambers.
- Please advise on the way forward regarding the below email as I am being asked to be completely removed.
- The second part is that Nick has become extremely aggressive with me and it appears that he wants to prefer charges of theft by servant in a criminal manner.”
125. From this email, it is apparent that the Respondent was aware that one of the 1st Claimant's partners (Nick) was pushing for him to be charged with a criminal offense of theft by servant. As such, it is apparent that the Respondent was aware that the case had been escalated to the police with the possibility for his arrest and presentation to court. It is therefore more likely than it is not that his decision to travel to the United Kingdom was motivated by an attempt to avoid the impending judicial process in Kenya than to merely visit his other motherland.
126. There is evidence to suggest that the Respondent transferred some of his assets to third parties (in this case, the Interested Parties) within the period of the disputed transactions with the Claimants. For instance, according to the ownership history which the Claimants have attached to their replying



- affidavit, motor vehicle registration number KBV 919X was initially registered in the Respondent's name. However, it was subsequently registered in the name of Kaycia Jinnah, the 2nd Interested Party, in May 2024.
127. Similarly, motor vehicles registration numbers KDH 252H and KCX555K were initially registered in the Respondent's name. However and according to the ownership history presented by the Claimants, they appear to have been transferred to Kian Jinnah in May 2024.
128. According to the bank documents/statements marked "F" in the Claimants' supporting affidavit, the impugned bank withdrawals by the Respondent appear to have taken place between the year 2022 and 2023. At the same time, it is apparent that a number of the cash transfers by the Respondent to the Interested Parties in the documents marked "D" in the Claimants' supporting affidavit were effected between 2022 and 2023. It is therefore apparent that the impugned cash transfers happened during the same period of the impugned withdrawals from the 1st Claimant's bank accounts.
129. The Respondent contends that the transfers were for purposes of supporting his family. However, the Claimants contend that they (the transfers) were with the intent of dissipating the funds.
130. As mentioned earlier, where the court is satisfied by affidavit evidence that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him has disposed of or removed from the local limits of the jurisdiction of the court his property or any part thereof or that the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, it (the court) may require such defendant to show cause why he should not furnish security for the performance of the anticipated decree. If he fails, the court will require him to deposit security that is sufficient to satisfy the anticipated decree.
131. As demonstrated earlier in the decision, the Respondent, though a dual citizen of Kenya and the United Kingdom, left the country after the suspected fraud against him was reported to the police. From the emails by the Respondent to his lawyers referred to earlier, the Respondent appears to have been aware that the Claimants were taking precipitate action against him just before he left Kenya for the United Kingdom. As such, there is evidence to suggest that he left the country's jurisdiction to avoid this process.
132. The Claimants have also demonstrated that the Respondent transferred some of his vehicles to some of the Interested Parties in May 2024 after this dispute began. This affords reasonable probability that he may have been disposing of the assets in a bid to avoid execution of any anticipated decree against him. In the premises, the court has reasonable basis to require him to provide security for payment to the Claimants of the sum claimed (Ksh. 113,655,213.00) in the event that they (the Claimants) succeed in the suit.
133. The Respondent has argued that a court decree should not be treated as a charge or a preferential debt over his property. That is not in dispute. However, this argument disregards provisions of law which entitle a claimant to move the court for security before judgment in the event that the defendant is engaged in activities which are intended to frustrate enforcement of any anticipated judgment against him.
134. The Respondent has contended that the prayers against the Interested Parties should not be granted. I partially agree. Except where there is evidence to suggest that the Respondent's dealings with the Interested Parties may have had the ulterior motive of evading enforcement of a court decree, the court should leave the Interested Parties outside the purview of any orders which may issue.



135. In this respect, the parties do not contest that the Respondent is a spouse to the 1st Interested Party and the father of the 2nd and 3rd Interested Parties. In this position, he stands in the position of loco parentis with respect to the 2nd and 3rd Interested Parties with the usual obligation to provide for them.
136. The Respondent contends that the monies he sent to the Interested Parties was on the basis of the foregoing responsibility that inheres in him. He contends that the money was for payment of school fees for the children and the general upkeep of the family.
137. It is in this respect that the court will treat the funds which were sent to the Interested Parties. As such and on this account, the court will not issue orders against the account of the 1st Interested Party. However, any other property which was moved from the Respondent to the Interested Parties under circumstances implying that the Respondent was trying to circumvent the anticipated judicial process should be preserved pending trial.
138. Before I pen off, let me address two other issues which the Respondent's counsel has raised in his submissions. First, he contends that the Claimants have not provided particulars of the alleged fraud against the Respondent in their Statement of Claim. As such, the orders they seek in the application should not issue.
139. I have looked at the Statement of Claim by the Claimants and note that it is sufficiently crafted with particulars of conversion presented at paragraph 18 thereof. As such, I consider counsel's contention unfounded. In any event, what counsel raises in this respect are matters which the court is required to consider in its final judgment and not at this interlocutory stage.
140. The second issue relates to whether the Claimants are debarred from invoking the court's jurisdiction by the doctrine of exhaustion of alternative remedies. The Respondent's counsel asserts that since the Claimants had reported the matter to the police, they should pursue that avenue for a remedy without simultaneously invoking the court's civil jurisdiction. He also asserts that since the matter is commercial in nature, the Claimants should pursue their remedy from the High Court and not this court.
141. First, the question whether the Claimants are barred by the exhaustion principle is not raised in the Respondent's affidavit or indeed any other pleadings by him. As such, it is doubtful that it can simply be taken up through submissions without the benefit of being contained in the pleadings. If this were to be permitted, it will deny the Respondent's opponent the opportunity to rebut the assertion, a matter which will affect the fairness of the trial process.
142. Second, the fact that the Claimants have reported the matter to the police does not debar them from pursuing a civil remedy over the same matter. The two processes are distinct and mutually exclusive.
143. Third, the court has found, albeit on preliminary basis that the dispute between the Respondent and the Claimants is founded on grievances that are founded on an apparent employment relation between the Respondent and the 1st Claimant. In any event, the Respondent is yet to file a Statement of Defense to contest the Claimants' contention that he was an employee of the 1st Claimant. That being the case, this court is of the preliminary view that it has jurisdiction to deal with the dispute.

Determination

144. The upshot is that the court makes the following findings and orders:-
 - a. The court finds that the Claimants have satisfied the conditions for the grant of an interim injunction against the Respondent.



- b. In the premises, the court hereby issues an order of interim injunction to restrain the Respondent and/or the Interested Parties and/or their agents from selling, leasing, charging, disposing and/or transferring or in any other way interfering with the following motor vehicles pending the hearing and disposal of this suit:-
- i. Motor vehicles registration numbers KDM 356E, KBQ 513U, KCT 555V. According to the evidence supplied by the Claimants, the above vehicles are all registered in the name of the Respondent.
 - ii. Motor vehicles registration numbers KCX 555K, KDH 252H and KBV 919X. From the evidence on record, these motor vehicles were initially registered in the name of the Respondent. However, in May 2024, they were transferred to the 2nd and 3rd Interested Parties in circumstances suggesting that the disposals were intended to defeat any anticipated decree in favour of the Claimants.
- c. No evidence has been presented to suggest that motor vehicle registration number KBN 900F belongs to the Respondent. As such it is not affected by the orders issued herein.
- d. The evidence provided by the Claimants show that motor vehicle registration number KCW 888G is registered in the name of the 2nd Interested Party. There is no evidence to suggest that the 2nd Interested Party acquired the vehicle either from or through the Respondent. As such, the vehicle is not affected by the orders issued herein.
- e. Although the Claimants have sought orders in respect of motor vehicle registration number KBT 854X, they have not provided data on it. As such, it is unclear who owns the vehicle. In the premises, the vehicle is not affected by the orders issued herein.
- f. The Claimants have sought an order to restrain the Respondent or any person acting under him from transferring, selling, charging or in any other way interfering with immovable property registration number Kiambu/Municipality Block 6/233. They contend that the property belongs to the Respondent and was acquired using the impugned funds. In his replying affidavit, the Respondent does not deny the contention that the property belongs to him. He only contends that the Claimants have not provided evidence to demonstrate that he acquired it using the embezzled funds. As a matter of fact, at paragraph seven (7) of the Respondent's written submissions, he admits ownership of this and other properties which the Claimants have mentioned in their Statement of Claim and application. He contends that he acquired the properties long before the Claimants came up with their allegations of fraud against him. The foregoing being the case, I arrive at the conclusion that the Respondent has a proprietary interest in the aforesaid immovable property. In the premises, I issue an order of interim injunction to restrain him (the Respondent) and or the Interested Parties and or their agents from transferring, selling, charging or in any other way interfering with the aforesaid immovable property pending resolution of this dispute.
- g. The evidence on record shows that the Respondent is the account holder of the following bank accounts: Stanbic Bank A/C Nos. 0100XXXXXX1084, 0100XXXXXX1076 and 0100XXXXXX1092; DTB Kenya Limited A/C Nos. 544XXXXXX01 and 544XXXXXX02; and ABSA Bank Limited A/C No. 202XXXXXX88. As such and in view of the analysis in the earlier parts of this decision, I hereby issue an order of interim injunction barring him and or the Interested Parties and or their agents from transferring, pledging, assigning, securitizing or in any other way interfering with the funds that may be on the aforesaid accounts pending resolution of the instant dispute.



- h. In view of the sentiments I expressed earlier in the decision, account No. 14055174 in the name of the 1st Interested Party is not affected by the orders issued herein.
- i. I order the Respondent to provide security for the performance of the anticipated decree of Ksh. 113,655,831.00 which the Claimants are pursuing through this suit by either providing a suitable bank guarantee for the said amount or depositing the amount in court within 30 days of this order.
- j. If the Respondent complies with the order for provision of security as directed above, the interim injunction orders which have issued herein will be lifted forthwith.
- k. If the Respondent does not provide the aforesaid security within the timeframe set by the court, the injunctive orders issued herein will crystalize.
- l. Further, the affected properties will be deemed as attached and preserved, irrespective of their physical location, until the suit is heard and determined. As such, the Respondent and the Interested Parties whose properties are covered by the order will be required to forthwith deliver possession thereof to the court grounds of the High Court of Kenya, Milimani Law Courts for preservation.
- m. Costs of the application to abide the results of the case.

DATED, SIGNED AND DELIVERED ON THE 13TH DAY OF FEBRUARY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimants

.....for the Respondent

.....for the Interested Parties

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

