



Oloo v Avo Distribution Group alias Avo Group (Cause E525 of 2022) [2025] KEELRC 1103 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1103 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E525 OF 2022**

CN BAARI, J

APRIL 4, 2025

BETWEEN

AUGUSTINE OMONDI OLOO CLAIMANT

AND

AVO DISTRIBUTION GROUP ALIAS AVO GROUP RESPONDENT

RULING

1. This ruling relates to the Claimant/Applicant's Motion dated 29th November, 2024 brought pursuant to Rule 44 and 45 of the Employment and Labour Relations Court (Procedure) Rules 2024, and Order 5 Rule 22B, Order 13 Rule 2, Order 39 Rule 5 & 6, Order 40 Rule 1, 4 and 11, Order 51 Rule 1 of the Civil Procedure Rules 2010, Article 159 of *the Constitution* of Kenya; Sections 1A, 3B; Section 5 of the *Civil Procedure Act*. Under the motion, the Applicant seeks the following reliefs: -
 - a. That an order for Mareva Injunction do issue to freeze any transfer, sale or removal from the Kenyan jurisdiction of motor vehicles registration numbers KDH249X, KDH 456N and KDH 260X against the Respondent, its agents and associates and the same be served upon the National Transport and Safety Authority (NTSA) pending hearing and determination of application and suit.
 - b. That an order to restrain the Respondent from transferring, disposing in any way motor vehicles registration numbers KDH249X, KDH 456N and KDH 260X pending hearing and determination of application and suit.
 - c. That in the Alternative, the Respondent do deposit United states Dollars Fifty Thousand (USD 50,000\$) and or its equivalent in Kenyan shillings at current commercial exchange rate in a joint interest earning bank account of both the Claimant and Respondent's Advocates or before this court pending hearing and determination of the Application and the suit.



2. The motion is supported by grounds on the face and the affidavit of Augustine Omondi Oloo, the Claimant/Applicant herein. The crux of the application is that the Respondent has officially communicated to her employees and business associates that they will be terminating all contracts by 31st December 2024, and that there will be no operations in Kenya by next (this) year, thus escaping jurisdiction of this court, making the proceedings and exercise being investigated by this court just a mere academic exercise.
3. The Applicant avers that winding up proceedings have since been filed by the Respondent and the business of the Respondent has already commenced after all machinery was moved to Rwanda, and all assets of financial meaning moved to Rwanda as well, save for the said three (3) cars/trucks that are yet to be sold off or transferred out of this court's jurisdiction.
4. That the Respondent has moved company, relocated and re-branded all its business interests to Rwanda indefinitely and there will be no assets left in Kenya to satisfy the Respondent's financial obligations to either the Claimant or this court, if any are granted, awarded or directed.
5. The Applicant/Claimant prays that he should not be condemned to engage into an exercise in futility where the legal exercise and claim is just a mere academic exercise against the principles of natural justice and legitimate expectation to exercise rights in execution of courts directions and orders.
6. The Respondent opposed the motion vide a replying affidavit sworn by Mohamed on 18th December, 2024. The Respondent avers that the instant application is an abuse of the court process, as the Claimant/Applicant seeks reliefs that are contrary to the established legal principles under the [Insolvency Act, 2015](#).
7. The Respondent states that it is currently under liquidation and the request by the Claimant/Applicant's for a Mareva Injunction contravenes the statutory provisions under the [Insolvency Act, 2015](#), specifically the order of priority outlined in the Second Schedule to the Act. The Respondent further argues that granting such an order, would undermine the liquidation process and prejudice other creditors, contrary to the law.
8. The Respondent avers that the Claimant/Applicant has not tabled proof of the Respondent having moved assets to Rwanda, and is merely speculating, yet it is trite that whoever alleges must prove.
9. The Respondent further states that the Claimant/Applicant has made reference to motor vehicles registration numbers KDH 249X, KDH 456N and KDH 260X alleging that they are yet to be transferred, and that this Court will note that no proof has been adduced to show that motor vehicle registration numbers KDH 456N and KDH 260X are in the Respondent's name.
10. The deponent further avers that when he assumed office as a Liquidator, he called for a List of Assets and Liabilities from the Respondent's Directors and Shareholders, and that motor vehicles KDH 249X, KDH 456N and KDH 260X did not appear in the list of assets and liabilities he was supplied with as per Form 32 filed with the Official Receiver; which form has also been filed before this Honourable Court by the Claimant/Applicant.
11. It is the deponent's position that upon receipt of the instant application, he called for an explanation from the Directors and Shareholders of the Respondent on the cited motor vehicles, and was informed that the Respondent's name still appears since the Purchaser has not followed up on the transfer of ownership. That it is therefore evident the referenced motor vehicles were long sold prior to commencement of the members' voluntary liquidation.



12. That the Claimant/Applicant has made no justification for deposit of USD 50,000 and it is a clear attempt at ensuring the Applicant has security for the satisfaction of his judgment and in any case, this amount is not available due to the ongoing liquidation process as the liquidator is consolidating the Respondent's assets in order to satisfy creditor's claims.
13. The deponent avers that as the Liquidator, he is clothed with power to dispose of assets of the Company/Respondent to satisfy creditors' claims and granting the Orders sought herein, will only interfere with his statutory powers.
14. That if the orders are granted as prayed, the Claimant/Applicant shall have succeeded to use this Honourable court to unlawfully prioritize his claim.
15. The Applicant filed a further affidavit sworn on 25th January, 2025, wherein, he avers that indeed the motor vehicles that he had introduced before this court for mareva injunction, are still registered in the names of the Respondent and are being used to transport materials, assets and machinery from Kenya to Rwanda.
16. It is his position that there was no evince brought to this court to show that the cars have since been transferred, which would be a different position from the search reports from NTSA.
17. That the Respondents have taken grading machines and all machinery of the factory and also closed down on all business and banking accounts and moved to Rwanda, and they now want to delay the case so that they can sell their there (3) trucks which are the only property remaining and which can satisfy any award or financial obligation against the Respondent in and under the jurisdiction of this court.
18. The Applicant further avers that the go-down No. A. ALP West logistics Park Tilisi, is now vacant and is to be occupied by another tenant since the Respondent has moved out and has relocated its entire business and interests to Rwanda, and indeed have removed the logos and signs as it were before.
19. Parties canvassed the motion through written submissions and submissions were filed for both parties, and which have been duly considered.

Analysis and Determination

20. I have considered the motion, the further affidavit, the replying affidavit in opposition and the rival submissions. The singular issue that arise for determination is whether the Applicant has satisfied the requirements for grant of an order of Mareva injunction.
21. In the case of Central Bank of Kenya vs Giro Commercial Bank Limited & Another [2007] 2 EA 93, it was held that the power of a court to grant a Mareva Injunction is a discretionary one and is only used in limited circumstances.
22. Further in UBA Kenya Bank Limited v Sylvia Mututi Magotsi [2015] eKLR, the court outlined the threshold for the grant of a freezing order as follows: -
 - “..... Before granting a freezing injunction, the Court will usually require to be satisfied that; -
 - i. The Claimant has ‘a good arguable case’ based on a pre-existing cause of action
 - ii. The Claim is one over which the Court has jurisdiction.
 - iii. The Defendant appears to have assets within the jurisdiction.



- iv. There is real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted.
 - v. The balance of convenience is in favor of granting the injunction
 - vi. The Court can also order disclosure of documents or the administration of requests for further information to assist the Claimant in ascertaining the location of the Defendant's assets.”
23. The Respondent does not dispute that a liquidation notice in respect of the Respondent's company has been issued and it is in fact the liquidator who has sworn the replying affidavit on behalf of the company.
24. The liquidator further states that upon receipt of the instant application, he called for an explanation from the Directors and Shareholders of the Respondent on the cited motor vehicles, and was informed that the Respondent's name still appears since the Purchaser has not followed up on the transfer of ownership.
25. The Claimant's case before this court is no doubt a good and arguable case, based on a pre-existing cause of action. It is also true that this Court has jurisdiction over the claim herein, and the motor vehicles subject of this matter are some of the assets still held by the Respondent within the jurisdiction of the court.
26. The Respondent has confirmed vide the replying affidavit that the motor vehicles subject of this motion have neither been sold and/or transferred to a third party nor did they form part of the list of assets and liabilities surrendered to the official receiver for purposes of the on-going liquidation. The Claimant/Applicant has further shown vide an official search produced in evidence before this Court, that motor vehicles KDH 249X, KDH 456N and KDH 260X remain the property of the Respondent.
27. In the case of *Mareva Compania Naviera SA vs International Bulk Carriers SA* [1975] 2 Lloyd dis Rep 509 as referenced at Paragraph 26 in *Mareva* (Supra) wherein Lord Denning MR stated as follows:-
- ‘In my opinion, that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment (emphasis court), the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him from disposing of those assets.’
28. By dint of the foregoing, I find and hold that the Applicant has sufficiently demonstrated that he an arguable case and there is a real risk that the subject motor vehicles will be removed from the jurisdiction of the court or otherwise dissipated if the injunction is not granted.
29. In the end, I find the motion merited and grant orders as follows: -
- a. That an order for Mareva Injunction be and is hereby issued against the Respondent, its agents and associates to freeze any transfer, sale or removal from the Kenyan jurisdiction of motor vehicles registration numbers KDH249X, KDH 456N and KDH 260X pending determination of the suit herein.
 - b. That the Applicant is directed to serve this order upon the National Transport and Safety Authority (NTSA).
30. It is hereby so ordered.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH
DAY OF APRIL, 2025.**

C. N. BAARI

JUDGE

Appearance:

Mr. Malinzi present for the Claimant/Applicant

Mrs. Omondi h/b for Ms. Kavere for the Respondent

Ms. Esther S - C/A

