



**TV Africa Kenya Holdings Limited & another v Communications Authority of Kenya  
(Civil Appeal E1136 of 2024) [2025] KEHC 1338 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1338 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E1136 OF 2024  
TW CHERERE, J  
FEBRUARY 27, 2025**

**BETWEEN**

**TV AFRICA KENYA HOLDINGS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**SOUTHRIDGE HOLDINGS LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**COMMUNICATIONS AUTHORITY OF KENYA ..... RESPONDENT**

**RULING**

1. By a notice of motion dated 03<sup>rd</sup> October 2024 premised on Order 42 Rule 6(6) of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*, Appellants seek the following orders:
  1. That the Respondent whether by itself, servants, agents, employees and/or officers, be restrained by way of a temporary injunction from re-allocating the assignment of Frequencies being 89.5 MHz Lamu, 90.2 MHz Kwale, 93.8 MHz Narok and 93.3 MHz Lodwar owned by the 2nd Appellant to other broadcasters and/or persons whatsoever pending the hearing and determination of the instant Appeal.
  2. That the costs of this application be borne by the Respondent.
2. The grounds in support of the application include:
  - a. The Appellants received letters dated 02<sup>nd</sup> November 2023 on 19th December 2023, informing them of the revocation of the assignment of the said frequencies.
  - b. The Appellants challenged this decision before the Communications and Multimedia Appeals Tribunal in Appeal No. CAMATA/E003/2023, which was dismissed on 06<sup>th</sup> September 2024.
  - c. The Respondent has threatened to reassign the frequencies, which would render the pending appeal nugatory.



- d. The appeal is arguable with high chances of success.
  - e. The Respondent would not suffer prejudice if the injunction is granted.
  - f. The court has jurisdiction under Order 42 Rule 6(6) of the Civil Procedure Rules to grant a temporary injunction to preserve the subject matter of the appeal.
3. The application is further supported by an affidavit sworn on 03<sup>rd</sup> October 2024 by Ken Ngaruiya, the Chief Executive Officer of the Appellants, who reiterates the grounds in the application. He avers that Appellants own several frequencies in Kenya and have valid licenses issued by the Respondent which allow it to operate Radio and TV stations in Kenya. That on or about 19<sup>th</sup> December 2023, the Appellants received two letters dated 02<sup>nd</sup> November 2023 notifying them of the revocation of the assignment of frequencies being 89.5 MHz Lamu, 90.2 MHz Kwale, 93.8 MHz Narok and 93.3 MHz Lodwar (hereinafter “the Frequencies”) on grounds of their failure to obtain a broadcasting licence and operationalize the assigned frequencies.
  4. The deponent also avers that the Appellants challenged the Respondent’s decision by way of Appeal No. CAMATA No.E003 of 2023 on the grounds of violation of Article 47 of *the Constitution* on the right to a fair administrative action, and Section 4 of the *Fair Administrative Action Act* in that they were neither given prior nor adequate notice of the nature and reasons for the revocation of the frequencies assigned to the 2<sup>nd</sup> Appellant nor allowed to be heard and to make representations before the revocation of the frequencies.
  5. In addition, the deponent also avers that the Tribunal disallowed the appeal by judgment delivered on 06<sup>th</sup> September 2024 and Appellants have appealed vide a memorandum of appeal dated 03<sup>rd</sup> October 2024 which appeal it is contended is arguable and has overwhelming chances of success.
  6. The Respondent opposed the application through a replying affidavit sworn on 13<sup>th</sup> December 2024 by Peter Ngige, Deputy Director Frequency Spectrum Management who asserts that the 2<sup>nd</sup> Appellant had agreed to operationalize the frequencies within 12 months of obtaining a broadcasting license. The Respondent contends that the 2<sup>nd</sup> Appellant failed to activate and utilize the assigned frequencies within the agreed timelines despite being notified of its non-compliance through letters dated 01<sup>st</sup> March 2021, 05<sup>th</sup> July 2023, and 31<sup>st</sup> August 2023.
  7. The Respondent additionally argues that the Tribunal correctly upheld the revocation and that the frequencies have already been reassigned.
  8. The parties filed and exchanged written submissions. The Appellants insist that their appeal is meritorious and that their right to fair administrative action was violated. They argue that the balance of convenience lies in preserving the status quo pending appeal.
  9. The Respondent maintains that the Appellants have not demonstrated a prima facie case or that they will suffer irreparable harm, as damages would be an adequate remedy.

### **Analysis and Determination**

10. Section 102G of the *Kenya Information and Communications Act* provides that:

“Any person aggrieved by a decision of the Authority may, within fifteen days of receipt of the decision, appeal to the Tribunal and the Tribunal may confirm, vary, or set aside such decision.”



11. This provision grants an avenue for review of administrative decisions of the Communications Authority of Kenya. The Appellants contend that the decision was unfair and unlawful, necessitating an appeal under this section. Their appeal, therefore, falls within the jurisdiction of the court for review.
12. The principles for granting an interlocutory injunction were settled in *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 and reiterated in *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* (2014) eKLR, which outlined three conditions:
  - (a) Establishing a prima facie case with a probability of success.
  - (b) Demonstrating that the applicant will suffer irreparable harm if the injunction is not granted.
  - (c) If there is doubt, the court will decide on a balance of convenience.
13. In *Mrao Limited v First American Bank of Kenya Ltd & 2 Others*, the Court held that a prima facie case is one where, on the material presented, a tribunal properly directing itself would conclude that there exists a right that has been apparently infringed. Similarly, in *Kenya Commercial Bank v Nicholas Ombija* [2009] eKLR, the court held that irreparable harm must be injury that is so grave that an award of damages would be insufficient.
14. In *Kenya Power & Lighting Company Ltd v Benzene Holdings Ltd t/a Wyco Paints* [2016] eKLR and *Nairobi City County Government v. Salima Enterprises Ltd & 3 Others* [2018] eKLR, courts reaffirmed the established principles governing the granting of interlocutory injunctions in Kenya and emphasized adherence to the criteria set out in the landmark case of *Giella v. Cassman Brown & Co. Ltd* [1973] E.A. 358, which outlined proof of a prima facie case, irreparable harm, and balance of convenience.
15. In *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, the court reiterated that even when an arguable appeal exists, an injunction cannot be granted unless irreparable harm is proven.
16. The Appellants have raised valid concerns regarding fair administrative action and whether adequate notice and an opportunity to be heard were given before the revocation of the frequencies. However, they have not sufficiently demonstrated that they will suffer irreparable harm that cannot be compensated by damages. The mere fact that reassignment may have occurred does not automatically warrant injunctive relief, as the frequencies are public resources regulated by law.
17. Furthermore, in *Patricia Njeri & Others v National Museum of Kenya* [2004] eKLR, the court held that the balance of convenience favors maintaining the legal and regulatory framework rather than suspending an administrative decision unless grave injustice is demonstrated. Based on the foregoing, the court finds that while the appeal raises arguable points, the Appellants have not met the threshold for the grant of an interlocutory injunction.
18. Besides, the Respondent's assertion of reassignment, while unsubstantiated, introduces an element of complexity to the balance of convenience.
19. Consequently, I find that the application dated 03<sup>rd</sup> October 2024 is unmeritorious and it is hereby dismissed with costs to the Respondent.

**DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances



Court Assistant - Ubah

For Plaintiffs - Mr. Njuguna for Wainaina Ileri Advocates LLP

For Defendant - Ms. Musau for Majanja Luseno & Co. Advocates

