



**Geke t/a AN Geke & Company Advocates v Gachigi & 2 others; Ncba Bank Kenya Plc (Interested Party) (Civil Appeal E275 of 2024) [2025] KEHC 1755 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E275 OF 2024  
JM NANG'EA, J  
FEBRUARY 26, 2025**

**BETWEEN**

**ANDREW NYAKUNDI GEKE T/A AN GEKE & COMPANY  
ADVOCATES ..... APPELLANT**

**AND**

**LUCY MUTHONI GACHIGI ..... 1<sup>ST</sup> RESPONDENT  
CHRISTINE WANGARI GACHEGE ..... 2<sup>ND</sup> RESPONDENT  
ELIZABETH MBOGO ALIAS ELIZABETH WANJIRA EVANS .... 3<sup>RD</sup>  
RESPONDENT**

**AND**

**NCBA BANK KENYA PLC ..... INTERESTED PARTY**

**RULING**

1. By Notice of Motion dated 5<sup>th</sup> December 2024 the Appellant, which is a Law firm, craves reliefs as hereunder;
  1. Spent.
  2. That the Honourable Court be pleased to set aside the order freezing the appellants clients' accounts with NCBA Bank PLC Nakuru Branch being Accounts Nos. 120XXXX410, 144XXXX024 and 144XXXX024.
  3. That the Honourable Court to order the unfreezing of the said clients' accounts with NCBA Bank PLC Nakuru Branch being Accounts Nos. 120XXXX410, 144XXXX024 and 144XXXX024 pending the hearing and determination of the appeal filed herein.
  4. That the Honourable Court do issue an Order it deems fit, just and fair.



5. That costs of the application be provided for.
2. The application is predicated on the following grounds;
  - a. The subject matter in the suit CMCC No. E761 of 2022, relates to Accounts Nos. 120XXXX410 or 144XXXX024 and 144XXXX024 held with NCBA Bank Plc, Nakuru, which accounts are client accounts.
  - b. The appellant applied for the setting aside of the order freezing the said accounts but the Honourable Court declined to set aside and or stay the orders of 16<sup>th</sup> October 2023, on the basis that its not possible to determine whether the money in those accounts relate to the claim before court as the same could not be substantiated by way of affidavit evidence.
  - c. The application of 2<sup>nd</sup> May 2024 was premised on the same ground that the Honourable Court had relied on affidavit evidence to freeze the clients' accounts.
  - d. The order of 16<sup>th</sup> October 2023 is affecting innocent clients whose monies is in those accounts and now is resulting to numerous complaints as well as crippling and paralyzing the operations of the appellant/applicant firm.
3. One of the proprietors of the Appellant (Andrew Nyakundi Geke) swore an affidavit in support of the application.
4. The 1<sup>st</sup> Respondent opposes the application and filed Grounds of Opposition dated 13<sup>th</sup> December 2024 in the following terms;-
  1. That I am a male adult of sound mind and the applicant herein hence competent and capable of swearing this affidavit.
  2. That I am the 3<sup>rd</sup> respondent herein and do run a law firm in the name and style of A.N. Geke & Company Advocates.
  3. That I do operate three Client accounts with NCBA Bank PLC Nakuru Branch being Accounts Nos. 120XXXX410 same as 144XXXX024 and 144XXXX024.
  4. That the said three accounts were freed by an order dated 16<sup>th</sup> October 2023, which orders I sought to stay and or set aside in the application dated 2<sup>nd</sup> May 2024, which application was declined and the subject of appeal herein (Annexed is a copy of the order marked ANG 1).
  5. That freezing of the three Clients Accounts Nos. 120XXXX410, 144XXXX024 and 144XXXX024 with NCBA Bank Nakuru branch, which accounts holds client's money have resulted to numerous complaints as I am unable to serve them due to orders freezing them.
  6. That the appeal filed herein has high chances of succeeding as the Honourable Court was not able to determine whether the plaintiff's money was in any of the accounts (Annexed is a copy of the ruling marked ANG 2).
  7. That I operate a reputable law firm which if proved that the 1<sup>st</sup> respondent was part of the money deposited by one of my clients, I will be able to indemnify her.
  8. That it has become extremely difficult for the 3<sup>rd</sup> defendant / applicant to serve his clients as their monies in those accounts cannot be accessed.
  9. That I pray stay of the order issued on 16<sup>th</sup> October 2023, and the three clients' accounts Nos. 120XXXX410, 144XXXX024 and 144XXXX024 with NCBA Bank Nakuru branch



be reopened to enable me serve the other clients who are not party herein and whose money is in those accounts.

10. That my innocent clients whose monies is in those accounts should not be held at ransom, for acts that they are not aware, hence the need to the freezing orders lifted.
  11. That the existence of the said orders has infringed on Advocate client Confidentiality, leave alone leading to numerous complaints from my clients whose monies cannot be accessed.
  12. That unless orders of 16th October 2023, are set aside and or varied, respondent's action will occasion the defendant/ applicant irreparable damage to its repute as a respected law firm, lead to unnecessary lodge of complaints of misuse of money of clients, loss of business and emotional stress.
  13. That I verily believe that the 1st Respondent's intention is to totally damage the reputation and many years put in place to build a name.
  14. That it's in the interest of justice that the orders sought are granted as the respondent's claim if found valid will be compensated by those with whom she had dealings with if any.
  15. That what is deponed herein is true to the best of my knowledge, belief and information.
5. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as well as the Interested Party did not put in responses.
  6. The Appellant's affidavit evidence is that the Law Firm operates three client bank accounts with the Interested Party to wit; account numbers;  
120XXXX410, 144XXXX024 and 144XXXX024 with NCBA Bank Nakuru branch.
  5. By order of the lower court issued on 16<sup>th</sup> October 2023 the three accounts are said to have been frozen resulting in numerous complaints from affected clients of the advocates. This prompted filing of this appeal and the application now under consideration. Counsel deposes that the appeal stands a high chance of success for the reasons that the trial court could not determine whether money belonging to the Claimants in the suit was in any of the three accounts in question.
  6. The Appellant further deposes inter alia that they are unable to serve their innocent clients for lack of access to the said accounts holding their funds. Counsel laments that the impugned freezing order has infringed the essential advocate-client confidentiality with a potential to cause irreparable damage of the Law Firm's reputation.
  7. Learned Counsel for the Appellant and the 1<sup>st</sup> Respondent filed Written Submissions on the application. The Applicant's advocates underscore the averments as to the factual position in the affidavit supporting the application. Counsel make no legal submissions.
  8. Similarly, the 1<sup>st</sup> Respondent's advocates do not strictly present legal submissions but make reference to the record of the trial court and facts that Counsel think are relevant.
  9. The order the Appellant complains of was issued by the lower court on 16<sup>th</sup> October, 2023 as here below;

“ That there be a temporary injunction restraining defendants herein whether by themselves, their personal representatives, successors assigns, employees, servants and/or agents, or any of them or otherwise howsoever, from having access to, making or demanding the withdrawal or transfer of any funds held to their credit or order by the NCBA Bank Kenya Plc in account numbers 144XXXX024, 120XXXX410 and 1XX84-6XX24 or monies held



for and on behalf of the Defendants in any other account, to the intent that they must at all times ensure that a net balance of a total of Kshs. 10,000,000/= is retained and frozen in any such accounts held with NCBA Bank Kenya Plc after all deductions and charges, pending hearing and determination of this suit or until further orders of the court.”

5. The above order was issued against the Appellant and Co-defendants in the suit upon application by the 1<sup>st</sup> Respondent herein who is the Plaintiff in the case before the lower court.
6. As deduced from the 1<sup>st</sup> Respondent’s Grounds of Opposition, she had on 4<sup>th</sup> November 2016 transferred a sum of Kshs. 10,000,000/= from her bank account to the 2<sup>nd</sup> Respondent’s account at her request. The cash was to be deposited in the High Court for an undisclosed reason with an understanding that the money would be returned to the 1<sup>st</sup> Respondent’s Bank Account once released by the High Court. The Kshs. 10,000,000/= were deposited into the High Court alongside other funds contributed by the 3<sup>rd</sup> Respondent and others, all totaling Kshs. 31,800,000/=. In the year 2020, the High Court is said to have issued an order in Succession Cause Number 96 of 2000 releasing the said sum of Kshs. 31,800,000/= for onward transmission to the depositors.
7. The 1<sup>st</sup> Respondent further states that on 16<sup>th</sup> June 2020, the Appellant, the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> Respondent received the sum of Kshs. 10,000,000/= alluded to hereinabove which sum was “commingled” with other monies through bank account numbers 144XXXX024 and 12XXXX410 jointly operated by them with the Interested Party. The three are alleged to have disbursed and spent the money and transferred a balance of Kshs. 5,700,000/= from bank account numbers 144XXXX024 and 12XXXX410 to bank account number 144XXXX024 held with the Interested Party. The trial court is said to have confirmed this movement of the cash in its ruling of 21<sup>st</sup> September 2023 that gave rise to this appeal.
8. The 1<sup>st</sup> Respondent asserts that the Appellant Law Firm has not adduced evidence that their stated accounts hold monies other than the sum remitted to them by the High court on her behalf. It is pointed out that the trial court’s order does not bar the Appellant’s transactions on the subject Accounts save that at all times a net balance of Kshs. 10,000,000/= allegedly belonging to the 1<sup>st</sup> Respondent should be maintained pending hearing and determination of the suit before the Subordinate Court.
9. The 1<sup>st</sup> Respondent therefore inter alia contends that she would suffer prejudice if the lower court’s freeze order is lifted before hearing and determination of the suit or this appeal.
10. The orders the Appellant prays for are in the nature of mandatory injunction pending hearing and determination of the appeal. As held in the popular case of Kenya Breweries Limited vs Washington Okeyo (2002) eKLR, a mandatory injunction is not usually granted at the interlocutory stage of proceedings unless the Applicant demonstrates special circumstances warranting such injunction. It should be shown that the case before the court is a simple one that can be determined in a summary manner or that the Respondent is attempting to steal a march on the Claimants. It has been held that these stringent conditions precedent to grant a mandatory injunction are necessary because the order has the effect of finally determining contested issues at the interlocutory stage.
11. The principles guiding the court in consideration of injunctions including mandatory injunction were long settled in *Giella vs Cassman Brown* (1973) E. A 358; Firstly, the applicant must show a prima facie case with a probability of success. Secondly, the applicant should also demonstrate that irreparable loss will result if injunction is not ordered. Lastly, the Court, where in doubt, will determine the application on a balance of convenience. It is now settled that the three limbs are required to be surmounted



sequentially (see the Court of Appeal decision in Nguruman Limited vs Jan Bonde Nielsen & 2 Others (2014) eKLR).

12. It is not disputed that the Appellant is holding the 1<sup>st</sup> Respondent's money. The Appellant's affidavit does not demonstrate that the bank accounts in question hold other funds other than those belonging to the 1<sup>st</sup> Respondent. Even if the accounts hold any other funds belonging to third parties, the lower court's order is explicit that it is only the 1<sup>st</sup> Respondent's cash of Kshs. 10,000,000/= that must remain in the accounts at all times awaiting further orders of the court at the conclusion of trial. The Appellant is at liberty to transact with any other cash in the accounts. I do not find any special circumstances to compel the court to set aside the lower court's order as such order would occasion prejudice to the 1<sup>st</sup> Respondent.
13. The Appellant has not therefore made out a prima facie case with a reasonable chance of success in the appeal.
14. The above finding is sufficient to dispose of the application. I must, however, observe if only for academic purposes that the Appellant has not shown that they would suffer irreparable loss that cannot be compensated by damages if the stated bank accounts are not unfrozen.
15. In the result the application is dismissed and the costs thereof shall abide the appeal.

**J. M. NANG'EA, JUDGE.**

**RULING DELIVERED THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:**

Appellant's Advocate, Mr. Onchuru

1<sup>st</sup> Respondent's Advocate, Absent

2<sup>nd</sup> Respondent's Advocate, Mr. Mogire

3<sup>rd</sup> Respondent's Advocate, Absent

Interested Party, Absent

The Court Assistant (Jennifer)

**J. M. NANG'EA, JUDGE.**

