



REPUBLIC OF KENYA



KENYA LAW
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**Suala Investment Limited v Muiri (Civil Suit E001 of 2025)
[2025] KEHC 4275 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL SUIT E001 OF 2025
DKN MAGARE, J
MARCH 26, 2025**

BETWEEN

SUALA INVESTMENT LIMITED PLAINTIFF

AND

STEPHEN IRUNGU MUIRI DEFENDANT

RULING

1. By the Application dated 14.1.2025, the Plaintiff sought the following reliefs:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. The Honourable Court be pleased to grant a temporary injunction prohibiting any unauthorized access and dealing with account number 011927XXXXXXXXX Cooperative Bank Kenya Limited Karatina Branch by the Defendant, his agents and or servants or any other entity including Cooperative Bank Kenya Limited pending the hearing and determination of the suit.
 - e. The Honourable Court be pleased to grant a temporary injunction prohibiting any disbursements and/or dealings with proceeds of all Coffee delivered by the Plaintiff to the Nairobi Coffee Exchange through Direct Settlement Systems or other means pending the hearing and determination of the suit.
 - f. Costs of this Application be provided.
2. The Application is based on the Grounds stated in the Application as well as the Supporting Affidavit of Ellen Wambui Muiri sworn on 14.1.2025 materially stating as follows:



- i. The deponent was the director and shareholder of the Plaintiff.
 - ii. The Plaintiff, through a resolution of 24.11.2024 decided to open a Dollar Account with Cooperatives Bank to receive proceeds from the company's coffee farms.
 - iii. The Plaintiff had supplied coffee to the Nairobi Coffee Exchange and the anticipated proceeds of about Ksh. 2 Million were to be paid through the account but the Plaintiff was apprehensive that the Defendant would appropriate the funds to his own personal use.
 - iv. The Bank had refused to amend the signatories to the bank account.
 - v. If not prohibited, the Defendant will proceed to withdraw funds to the detriment of the Plaintiff.
3. The Respondent filed a Replying Affidavit sworn on 21.1.2025 contending inter alia that:
- i. The Defendant is one of the Directors of the Plaintiff, and the Directors, including Ellen Wambui Muiiri, are siblings.
 - ii. The Plaintiff company was established to manage tea and coffee farms of the deceased Francis Muiiri Ngacha who died on 27.6.2013 when the Administrators of the estate were unable to work together.
 - iii. The Plaintiff company has no property of its own and only manages the estate of the deceased.
 - iv. The defendant was appointed as sole signatory to the account at Cooperative Bank following the plaintiff's resolution.
 - v. The issues in the suit can be considered in the pending Succession Cause No. 72 of 2016 and Mediation Cause No. 182 of 2024.
 - vi. The Application is an abuse of the court process.

The Plaintiff's Submissions

4. The Plaintiff filed submissions dated 27.1.2025, in which she submitted that there was a prima facie case with chances of success. She cited *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* (2003) KLR. He further submitted that there would be irreparable harm if the Application is not allowed. Reliance was placed on *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* (2014) eKLR.
5. The Plaintiff maintains that the balance of convenience favors the Plaintiff. As held in *Chebii Kipkoech v. Barnabas Tuitoek Bargoria & Another* (2019) eKLR. It was his case that the balance tilts in favor of the party likely to suffer more significant harm if the injunction is not granted and who was the Plaintiff.

The Defendant's Submissions

6. On behalf of the Defendant, it was submitted that the suit had not been sanctioned by the Plaintiff as a company and was, as such, incompetent. Reliance was placed on *Kenya Commercial Bank Ltd v Stage Coach Management* (2014) eKLR. He submitted that the properties were in the name of the deceased Francis Muiiri Ngacha and were subject to the succession case vested in the administrators, and the suit herein was incompetent.



Analysis

7. The singular issue that presents for this Court's determination is whether the Applicant has fulfilled the legal threshold hold for the grant of a temporary injunction pending the hearing and determination of the suit.
8. This court is keen to draw borderlines between the issues that would go to full trial and the issues necessary to establish the conditions for granting a temporary injunction. The law that governs Applications for injunction is premised under Order 40 Rule 1 of the Civil Procedure Rules which provides as follows:-

1. Where in any suit it is proved by affidavit or otherwise-
 - a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
 - b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

9. The principles were laid down in the celebrated case of *Giella Vs Cassman Brown & Co Ltd* [1973] EA 358 where the court held that in order to qualify for an injunction;
- (i) First the applicant must show a prima facie case with a probability of success.
 - (ii) Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - (iii) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
10. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court of Appeal was of the view that these tests are sequential. The Court stated: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is



not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable.

In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."

11. Whereas the Plaintiff's case is that the Defendant is likely to waste the funds in the impugned account, it is not disputed that the funds, though subject to the Plaintiff company, are also proceeds of a succession cause whose determination is pending before the court. Further, the defendant is not an owner of an account in which the Applicant is interested. The basis upon which the Defendant is sued still appears to be a mystery. The accounts that are sought to be affected allegedly belong to the plaintiff and not the defendant. What, then, is the subject matter of this application?
12. In so far as I can discern, there is no valid cause of action capable of being heard in court. It is not the question of the purpose of the fund or the operations of the fund. It is that there is nothing personal sought against the defendant. For the court to intervene, it must be shown that there is more than directorship of the plaintiff.
13. The defendant is a director of the Plaintiff. The company is a legal entity and the directors of the company are the minds of the company. In case of disagreements between or among directors, there is a procedure to be found in the articles or constitution of the company on how such disputes should be resolved and if none, the party may, through appropriate procedure invoke the jurisdiction of the court. the dispute herein appears abruptly filed. Based on these stipulations, the court is in doubt whether there is a prima facie case. This position was reiterated by the Court of Appeal in *SNK v MSK & 5 others* (Civil Appeal 139 of 2010) [2015] KECA 1010 (KLR) (24 April 2015) (Judgment) as follows:

The learned judge did not give due regard to the settled principle of company law in *Salomon v Salomon* (1897) AC 22 that a company is a separate legal person from its shareholders and directors. These findings are sufficient to dispose of the 4th and 5th Respondents' cross appeal against the trial court's decision.
14. The Defendant and the Ellen Wambui Muiiri are both deemed not to be eligible to apply the funds of the Plaintiff for their own private use, I do not find the present suit presenting a reasonable and justiciable case. In *Coalition for Reform and Democracy (CORD) & 2 Others -v- Republic of Kenya & Another* HCCP 628 of 2014 [2015] eKLR, the court endorsed the doctrine of justiciability as stated by Lawrence H. Tribe in his treatise *American Constitutional Law*, 2nd Ed. Page 92 as follows:

'In order for a claim to be justiciable as an article III matter, it must "present a real and substantial controversy which unequivocally calls for adjudication of the rights asserted." In part, the extent to which there is a 'real and substantial controversy is determined under the doctrine of standing' by an examination of the sufficiency of the stake of the person making the claim, to ensure the litigant has suffered an actual injury which is fairly traceable to challenged action and likely to be redressed by the judicial relief requested. The substantiality of the controversy is also in part a feature of the controversy itself-an aspect of 'the appropriateness of the issues for judicial decision...and the actual hardship of denying litigants the relief sought. Examination of the contours of the controversy is regarded as necessary to ensure that courts do not overstep their constitutional authority by



issuing advisory opinions. The ban on advisory opinion is further articulated and reinforced by judicial consideration of two supplementary doctrines: that of 'ripeness' which requires that the factual claims underlying the litigation be concretely presented and not based on speculative future contingencies and of 'mootness' which reflects the complementary concern of ensuring that the passage of time or succession of events has not destroyed the previously live nature of the controversy. Finally, related to the nature of the controversy is the 'political question' doctrine, barring decision of certain disputes best suited to resolution by other governmental actors'.

15. There is nothing to be heard in court. The case is hypothetical and not based on any breach of the law. The court is invited to make a decision based on conjecture, hyperbole, surmise and rumours. The first limb of prima facie case has not been established. It is unnecessary to look at the defense documents when the case as pleaded does not raise, on a prima facie basis, a matter capable of being adjudicated. While addressing the issue of A prima facie case, in the decision of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, the court of Appeal posited that: -

A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." 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 that has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter.

16. The net effect is that no prima facie case is disclosed. The application then has to fail. It is unnecessary to go into the balance of convenience lies, and irreparable loss.

17. The next question is costs. The issue of costs is governed by Section 27 of the [Civil Procedure Act](#), which provides as follows:

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
- (2) The court or judge may give interest on costs at any rate not exceeding fourteen percent per annum, and such interest shall be added to the costs and shall be recoverable as such.

18. The Court of Appeal in the case of *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR) had this to say:

"It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.



19. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

20. Ordering the plaintiff to bear costs is to order the defendant to bear their costs. The proper of is that the true applicant will bear costs. The costs shall be borne by Ellen Wambui Muiiri, who filed the façade herein in the name of a company without authority to do so.

Determination

21. The upshot of the foregoing, I make orders as follows:

- i. The Application is dismissed in limine for want of merit.
- ii. The costs of Ksh 20,000/= shall be borne by Ellen Wambui Muiiri, who filed the façade herein in the name of a company without authority to do so.
- iii. Directions on the suit to be issued after the ruling.

**DELIVERED, DATED, AND SIGNED AT NYERI ON THIS 26TH DAY OF MARCH, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:

Mr. Otieno for the Plaintiff/Applicant

Mr. Muthangari for the Respondent

Court Assistant - Michael

