



New Busia Outgrowers Company Limited v Odongo & 3 others (Civil Suit E006 of 2024) [2025] KEHC 5533 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL SUIT E006 OF 2024
WM MUSYOKA, J
APRIL 28, 2025**

BETWEEN

NEW BUSIA OUTGROWERS COMPANY LIMITED PLAINTIFF

AND

WILBERFORCE BUNYASI ODONGO 1ST DEFENDANT

NIXO OKWARA 2ND DEFENDANT

GEOFFREY ETYANG 3RD DEFENDANT

CLEOPHAS OKELLO 4TH DEFENDANT

RULING

1. The application, dated 5th November 2024, is at the instance of Busia Outgrowers Company Limited, and it seeks an order of temporary injunction, to restrain the defendants from interfering with the smooth operations of the plaintiff and occupying the premises of the plaintiff at Nambale town, pending the hearing and determination of the suit herein. There is a further prayer that any orders made herein be enforced through the Officer Commanding the Nambale Police Station.
2. The application was opposed by the defendants, through 2 affidavits sworn by the 1st defendant, Wilberforce Bunyasi Odongo, sworn on 9th December 2024 and 11th March 2025.
3. The principal issue for determination is whether the order of temporary injunction sought should issue against the defendants.
4. The case by the plaintiff is that the defendants are neither directors, shareholders, members nor employees of the plaintiff. They, nevertheless, on 15th October 2024, stormed into the premises of the plaintiff, and attempted to take over the management of the plaintiff, and caused chaos at the premises. The matter was reported to the police, but the defendants have persisted in their illegal



activities of interfering with the management of the plaintiff, hence the necessity to file the instant suit and application.

5. The defendants deny those allegations. They state that there exists a firm known as Busia Outgrowers Company Limited, whose purpose is to connect cane farmers with the miller, Mumias Sugar Company Limited. They aver that Busia Outgrowers Company Limited is a public entity, which owns diverse assets, and whose directors are the same as those of the plaintiff. They accuse the directors of running down Busia Outgrowers Company Limited, and incorporating the plaintiff company, which they run using the assets of Busia Outgrowers Company Limited. They assert that the plaintiff occupies the premises of Busia Outgrowers Company Limited, and the directors have been using its assets for personal gain.
6. The court has discretion, to grant an injunction, according to *Nyutu & 3 others vs. Gatheru & 2 others* [1990] KLR 554 (Bosire, J), which discretion must be judicially exercised. Order 40 of the Civil Procedure Rules provides for temporary or interlocutory injunctions, and the principles upon which the order may be granted were settled in *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358 (Sir William Duffus P, Spry VP & Law JA). 3 key principles were identified. These are that the applicant must establish existence of a prima facie case with probability of success at the trial, that a temporary injunction would not be granted unless the applicant would suffer irreparable damage which would not be compensable in damages, and that where in doubt the court will determine the application on a balance of convenience. A modern rendition of those principles can be found in *Nguruman Limited vs. Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR)(Ouko, Kiage & M’Inoti, JJA).
7. The plaintiff has asserted that there is no legal entity known as Busia Outgrowers Company Limited, and that all the assets, formerly belonging to that non-existent entity, were acquired by the plaintiff, as part of an arrangement with the Kenya Sugar Board, to pay off certain loan due to the said Kenya Sugar Board. The defendants deny that acquisition, and insist that Busia Outgrowers Company Limited is still functional, and that one of the defendants is the Chairperson of the firm and the rest its members. That raises a prima facie case for trial at the hearing of the suit, as to whether Busia Outgrowers Company Limited, still exists, or it was wound up and its affairs taken over by the plaintiff. See *Nguruman Limited vs. Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR)(Ouko, Kiage & M’Inoti, JJA).
8. The plaintiff argues that it would suffer irreparable harm, which cannot be compensated in damages. It has averred that the defendants, and their groups, constantly invade the premises of the plaintiff, and disrupt activities there, making it difficult for the plaintiff to carry on with its business. The defendants have not disputed these allegations. Instead, they have asserted that they have only been trying to occupy premises that legally belonged to Busia Outgrowers Company Limited. There could be a more civil way of handling the matter, rather than storming premises and creating chaos. Such conduct could be detrimental to the health and wellbeing of the plaintiff, by causing damage or occasioning loss to the plaintiff in a way that may not be amenable to compensation in damages.
9. As I have found that a prima facie case exists, and that the plaintiff is exposed to loss or damage, which could be beyond compensation in monetary terms, I shall not consider the third limb, on balance of convenience.
10. In the end, I am persuaded that the orders sought in the application, dated 5th November 2024, should be granted. I hereby, therefore, grant a temporary order of injunction, to restrain the defendants, whether by themselves or their servants or agents, from interfering with the operations of the plaintiff and occupying the premises of the plaintiff at Nambale, pending the hearing and determination of this suit. This matter shall be mentioned on 8th May 2025, for pre-trial. It is so ordered.



DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 28TH DAY OF APRIL 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Azenga Alenga, Legal Researcher.

Advocates

Mr. Nandwa, instructed by Nandwa & Company, Advocates for the plaintiff.

Mr. Onsongo, instructed by Obwoye Onsongo & Company, Advocates for the defendants.

