



**Rabow Company Limited v Lucky Bus DMCC & 13 others; Betting  
Control and Licensing Board (Interested Party) (Civil Case E485 of 2024)  
[2025] KEHC 9314 (KLR) (Commercial and Tax) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E485 OF 2024  
F GIKONYO, J  
JUNE 30, 2025**

**BETWEEN**

**RABOW COMPANY LIMITED ..... PLAINTIFF**

**AND**

**LUCKY BUS DMCC ..... 1<sup>ST</sup> DEFENDANT**  
**AFREEKEN TECHNOLOGY LIMITED ..... 2<sup>ND</sup> DEFENDANT**  
**KAPLAN & STRATTON ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**  
**THE REGISTRAR OF TRADEMARKS ..... 4<sup>TH</sup> DEFENDANT**  
**SAFARICOM PLC ..... 5<sup>TH</sup> DEFENDANT**  
**REGISTRAR OF COMPANIES ..... 6<sup>TH</sup> DEFENDANT**  
**KEXIAN XIAO ..... 7<sup>TH</sup> DEFENDANT**  
**GE LI ..... 8<sup>TH</sup> DEFENDANT**  
**HANG MING ..... 9<sup>TH</sup> DEFENDANT**  
**JACINTA MORAA ..... 10<sup>TH</sup> DEFENDANT**  
**PURITY NJERI ..... 11<sup>TH</sup> DEFENDANT**  
**HONGDONG CHEN ..... 12<sup>TH</sup> DEFENDANT**  
**XU PENGFEI ..... 13<sup>TH</sup> DEFENDANT**  
**HANMENG QIU ..... 14<sup>TH</sup> DEFENDANT**

**AND**



## BETTING CONTROL AND LICENSING BOARD ..... INTERESTED PARTY

### RULING

1. The plaintiff filed the notice of motion dated 2<sup>nd</sup> February 2025, seeking:-
  1. an order suspending and/or revoking the Licence No. 00XXXX26 dated 21<sup>st</sup> January 2025 issued to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to trade under the name Bangbet and further restraining the said 1<sup>st</sup> and 2<sup>nd</sup> Defendants from engaging in the business of betting pursuant to the said Licence, whether by themselves, their agents and/or servants pending the hearing and determination of the consolidated suit.
  2. an order of temporary injunction restraining the Interested Party, Betting Control and Licensing Board, from issuing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with a licence to engage in the betting business under the name Bangbet pending the hearing and determination of the consolidated suit.

### Background

2. Through an application dated 14<sup>th</sup> January 2025, the Interested Party, moved the Court seeking orders to stop illegal trade by the 1<sup>st</sup> and 2<sup>nd</sup> defendants on the basis that they were operating under the name "Bangbet" without a valid license.
3. On 16<sup>th</sup> January 2025, granted an injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from engaging in betting activities under the name "Bangbet" and further froze the Paybill Numbers 56XXXX99 and 30XXXX87 associated with the illegal trade.
4. The 5<sup>th</sup> defendant froze the referenced Paybills on 23<sup>rd</sup> January 2025. On 24<sup>th</sup> January 2025, the plaintiff received communication from the 5<sup>th</sup> defendant's advocate that the interested party had issued a new license No. 00XXXX26, on 21<sup>st</sup> January 2025, allowing the 1<sup>st</sup> and 2<sup>nd</sup> defendants to trade under the name "Bangbet".

### Grounds

5. The application is based on the following grounds:-
  1. The plaintiff holds a valid non-transferable License No. 00XXXX672 to trade under the name "Bangbet" which remains in force until 30<sup>th</sup> June 2025, and the issuance of another license to the 1<sup>st</sup> and 2<sup>nd</sup> defendants for the same trade name is unlawful.
  2. The interested party's decision to issue the 1<sup>st</sup> and 2<sup>nd</sup> defendants another license reeks of malice, compromise, and undue influence.
  3. In its statement of defence, the interested party confirmed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were previously operating illegally and that their proceeds constituted proceeds of crime.
  4. The interested party is a public office, which is constitutionally and statutorily obligated to act lawfully in good faith



### **1<sup>st</sup> and 2<sup>nd</sup> respondent's response**

6. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a preliminary objection (PO) dated 25<sup>th</sup> March 2025, on the grounds that:-
  1. the court lacks jurisdiction to determine the application because it is not an appeal within the meaning of Section 62 of the *Betting, Lotteries and Gaming Act*, Cap 131 and cannot upset the interested party's decision to issue License No. 00XXXXX26 on 21<sup>st</sup> January 2025.
  2. The application is a disguised attempt to re-litigate matters already determined by Justice Mabeya in a ruling dated 26<sup>th</sup> September 2024.
  3. No appeal exists against the interested party's decision to issue License No. 00XXXXX26 on 21<sup>st</sup> January 2025.
7. The 1<sup>st</sup> and 2<sup>nd</sup> respondents also filed a replying affidavit sworn on 25<sup>th</sup> February 2025 by 2<sup>nd</sup> respondent's managing director David Kabue Gichuhi based on the same grounds of the PO. They highlighted the litigation history of the matter. It highlighted that the orders of 16<sup>th</sup> January 2025 only restrained them from engaging in the business of betting under the name Bangbet "as long as they were not licensed to". That following the order their application for amendment of its licenses from Bang Sport and Bang Casino to "Bangbet" was approved by the interested party and licences issued allowing them to trade using the trademark.

### **Interested party's response**

8. The interested party filed a replying affidavit sworn by its chairperson, Dr. Jane M. Makau on 24<sup>th</sup> March 2025. It acknowledged the orders of 26<sup>th</sup> September 2024 which directed the interested party to suspend the plaintiff's operations under the Bookmakers License Number 00XXXXX672. It also confirmed that prior to the issuance of the orders of 16<sup>th</sup> January 2025, it had filed an application challenging the 1<sup>st</sup> and 2<sup>nd</sup> defendants' business operations under the name "Bangbet" when they had only been licensed to trade in the name "Bangsport" for the Bookmarker's Off the Course License and "Bang Casino" for the Public Gaming License.
9. According to the interested party, even though it could have taken the administrative step of suspending the 1<sup>st</sup> and 2<sup>nd</sup> defendants' operations, it filed the application before the court seeking suspension orders because it was already a party to the suit and to prevent the possibility of other matters arising if it took the administrative step.
10. The interested party's position is that following the orders of 16<sup>th</sup> January 2025, the 1<sup>st</sup> and 2<sup>nd</sup> defendants wrote to the interested party seeking to have their licenses amended to read "Bangbet", i.e. their Bookmakers Off-the-Course license to be changed from Bangsport to Bangbet and their Public Gaming License to be changed from Bang Casino to Bangbet Casino.
11. The interested party averred that it was advised by the Hon. Attorney General that there was nothing in the court's ruling and orders of 16<sup>th</sup> January 2025 preventing it from considering the 1<sup>st</sup> and 2<sup>nd</sup> defendants' application and issuing them with licenses if they complied with the requirements. It highlighted that the ruling of 26<sup>th</sup> September 2024 noted that the "Bangbet" trademark had been assigned to the defendants.



## Submissions

12. The application was canvassed through written submissions. The plaintiff filed written submissions dated 21<sup>st</sup> May 2025.
13. The plaintiff contended that the doctrine of res judicata is not applicable because the current application is predicated on new and distinct facts. It argued that the court has the jurisdiction to hear the application under Article 165(3)(a) and (6) of *the Constitution*, despite the availability of a statutory appeal under Section 62 of the *Betting, Lotteries and Gaming Act*.
14. The plaintiff relied on the following decisions:-
  1. John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)
  2. Republic v Independent Electoral and Boundaries Commission Ex parte National Super Alliance (NASA) Kenya & 6 Others [2017] eKLR
  3. Republic v National Environmental Management Authority [2011] KECA 412 (KLR)
  4. Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] KECA 453 (KLR)
  5. Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others [2016] KECA 729 (KLR)
  6. Republic v Kenya Revenue Authority Ex parte Shake Distributors Ltd [2012] KECH 525 (KLR)
  7. Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 Others [2014] eKLR
15. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed written submissions dated 20<sup>th</sup> May 2025, and the interested party filed written submissions dated 21<sup>st</sup> May 2025, raising similar points.
16. The 1<sup>st</sup> and 2<sup>nd</sup> defendants and the interested party asserted that the plaintiff's earlier similar application dated 19<sup>th</sup> August 2024 was dismissed and that the current Application seeks to re-litigate already determined issues.
17. They submitted that the application is improperly before the Court and should be struck out for want of jurisdiction and legal basis. They argued that the administrative decision to issue the impugned licenses is subject to review only through judicial review or appeal under Section 62 of the *Betting, Lotteries and Gaming Act*. Supreme Court decision in Ithongo v Ithongo [2024] KESC 17,
18. They also asserted that the impugned licenses were issued lawfully and transparently. They also submitted that the plaintiff has failed to demonstrate illegality, malice, or impropriety. They asserted that the interested party's board sat and deliberated on the 1<sup>st</sup> and 2<sup>nd</sup> defendant's application and issued the license pursuant to Sections 4 and 5 of the *Betting, Lotteries and Gaming Act*.
19. The interested party argued that the withdrawal of its prior application dated 14<sup>th</sup> January 2025 was justified under Order 25 Rule 1 of the Civil Procedure Rules. It relied on the following cases:-
  1. Supreme Court decision in In re Council of Governors [2014] ICESC 54.
  2. In re Council of Governors [2014] ICESC 54 (KLR)
20. The 1<sup>st</sup> and 2<sup>nd</sup> defendants relied on:-



1. Mukisa Biscuit Manufacturing Ltd v West End Distributors (1969) EA 696
2. Speaker of National Assembly v Njenga Karume [2008] 1 KLR 425
3. Koya v Abdalla & Another (ELC 13 of 2020) [2023] KEELC 20759
4. Mburu Kinyua v Gachini Tuti (1976-80) 1 KLR 790
5. Uhuru Highway Development Ltd v Central Bank of Kenya & Others
6. Kennedy Mokuia Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende [2022] eKLR
7. Luka & 3 Others v Chairman Land Adjudication Committee, Leshuta & 6 Others (CA Application E005 of 2022) [2023] KECA 1232
8. Giella v Cassman Brown & Co Ltd [1973] EA 358
9. Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR
10. Dr. Simon Waiharo Chege v Paramount Bank of Kenya Ltd HCCC No. 360 of 2001
11. Esso Kenya Ltd v Mark Makwata Okiya [1992] eKLR
12. Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR
13. Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR
14. Commercial Finance Co. Ltd v Afraha Education Society [2001] Vol. 1 EA 86
15. Kitho Civil & Engineering Co. Ltd v National Bank of Kenya & Another (CA Application E706 of 2021) [2023]

## **Analysis and Determination**

### **Issues**

21. Substantive as well as issues of preliminary significance have arisen here. Those that are of preliminary importance are to do with; res judicata and jurisdiction. The substantive ones are on; a) withdrawal of the application dated 14.1.25; and b) quest for suspension and or revocation of licence issued to the 1<sup>st</sup> defendant and to injunct their carrying on business under the impugned license.

### **Res judicata**

22. The 1<sup>st</sup> and 2<sup>nd</sup> respondents contended that the plaintiff's application is barred by the doctrine of res judicata, having regard to the ruling delivered on 26<sup>th</sup> September 2024.
23. Elements of the doctrine of res judicata include that the matter in issue ought to have been in issue previously, heard and conclusively determined between the parties or representatives. Section 7 of the [\*Civil Procedure Act\*](#)
24. The issues in the present application flow from the events that occurred after the issuance of the orders of 16<sup>th</sup> January, 2025. Thus, to my mind, res judicata is not applicable.



## Jurisdiction

25. The 1<sup>st</sup> and 2<sup>nd</sup> defendants and the interested party argued that the court lacks jurisdiction to consider the administrative decision to issue the impugned licenses is subject to review only through judicial review or appeal under Section 62 of the *Betting, Lotteries and Gaming Act*.
26. On the other hand, the plaintiff argued that the court has jurisdiction to hear the application under Article 165(3) (a) and (6) of *the Constitution*, despite the availability of a statutory appeal under Section 62 of the *Betting, Lotteries and Gaming Act*.
27. Article 165(6) of *the Constitution* provides that:-
  - “(a) unlimited original jurisdiction in criminal and civil matters;
  - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”
28. The interested party is a body exercising a quasi-judicial function and from the above, the court has supervisory jurisdiction over it. Thus, the PO on jurisdiction fails.

## The context

29. The context of the issues in the matters to which this ruling relates is found in the ruling dated 26<sup>th</sup> September, 2024 and orders of 16.1.25.
30. Two applications were filed. One is dated 16.8.24 and was filed in case number E485 OF 2024 by the plaintiff in that case i.e Rabow Company Ltd. It was seeking inter alia injunctive reliefs as well as Anton Piller orders. It was dismissed in the following terms:

In any event, the balance of convenience tilts in favour of maintaining the status quo. The 1st defendant has the Trademark assigned to it and has had it registered in over 4 territories, Uganda, Rwanda, Ghana and EU.

Accordingly, the Motion dated 16/8/2024 is without merit and is dismissed.
31. The other application was filed by the plaintiffs in case number E491 of 2024; it was dated 18.6.24. The application was allowed in the following terms: -
  67. As at now, the trademark Bangbet is registered in favour of the 1st plaintiff. The same has been challenged in HCOM E 485 of 2024. That suit is still pending. As it were, the registration is still in favour of the 1st plaintiff. Most of the averments by the 1st plaintiff as to how the assignment was obtained has largely remained unchallenged. Mr. Zhencai Chen has not denied he is alias Owen Chen who signed the Deed of Assignment. The 1st defendant has not denied that it was a proxy of the 1<sup>st</sup> plaintiff in Kenya as far as the use of the Trademark Bangbet and betting was concerned.
  68. The 1st defendant has not challenged nor denied the assertion by the Assistant Registrar of TradeMark in her affidavit of 23/8/2024 that all the correct procedures were followed in the registration of the assignment of the trademark “Bangbet” in favour of the 1st plaintiff. That there was no necessity or requirement to advertise the same as contended by the 1st defendant.
  69. All the actions that were undertaken against the plaintiffs and complained of, were on the basis that the plaintiffs were infringing on the 1st defendant’s trademark, which is not the case. The



1st defendant must first surmount the registration of the assignment before it can reclaim the right to use the said trade mark.

70. In view of the foregoing, the Court finds that the plaintiffs have established a prima facie case with a probability of success.

71. On irreparable loss, it is clear that if the business of the plaintiffs use of its intellectual property is not safeguarded, it may irredeemably suffer. The loss may not be compensated by an award of damages.

Accordingly, the Court finds that the plaintiffs are likely to suffer irreparable loss and damage.

72. In any event, the balance of convenience tilts in favour of allowing the plaintiffs to continue trading undisturbed.

73. Accordingly, the application is merited and is allowed with costs.

74. In view of the foregoing, the Court makes the following orders: -

a. The preliminary objection by the 4th defendant dated 23/8/2024 is dismissed with costs.

b. The preliminary objection by the 3rd defendant dated 21/8/2024 is allowed with costs and the suit against it struck out.

c. The application dated 16/8/2024 in E 485 of 2024 is dismissed with costs.

d. The application dated 18/8/2024 in E491 of 2024 is allowed in terms of prayer Nos. 5,6,8, 9 and 10 with costs.

e. Due to the nature of these cases, an order hereby issues consolidating the HCCOM No. E485 of 2024 and E491 of 2024. HCCOM No. E 485 of 2024 to be the lead file.

f. The defendants do file and serve their respective defences within 14 days of this order.

g. The parties do undertake pre-trials within 60 days before the Deputy Registrar for expedited trial.

It is so ordered.

32. This context forms the functional foundation for resolving the issues before the court.

### **Withdrawal of the application dated 14<sup>th</sup> January, 2025**

33. The interested party filed the application dated 14<sup>th</sup> January, 2025 seeking inter alia; an order of injunction to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from trading and or engaging in the business of betting in the name of Bangbet.

34. The interested party's explanation for filing the application before this court was that it was already a party in the suit, and to prevent the possibility of other matters arising if it took the administrative step.

35. The court considered the said application ex parte and issued orders on 16<sup>th</sup> January, 2025 to the effect:-

“6. That pending the hearing and determination of this Application, as long as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are not licenced to, I issue a temporary injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents from trading or in any whatsoever manner engaging in the business of betting under the name



Bangbet through the platform www.Bangbet.com or in any other platform whatsoever.”

36. The averments made were that on the same date that the orders were issued, the 1<sup>st</sup> and 2<sup>nd</sup> respondents applied to amend their licences, leading to the approval of the amendment and issuance of the impugned licences to trade using the disputed trademark “Bangbet”.
37. The interested party averred that it was advised by the Hon. Attorney General that there was nothing in the court’s ruling and orders of 16<sup>th</sup> January 2025 preventing it from considering the 1<sup>st</sup> and 2<sup>nd</sup> defendants’ application and issuing them with licenses if they complied with the requirements. It highlighted that the ruling of 26<sup>th</sup> September 2024 noted that the “Bangbet” trademark had been assigned to the defendants.
38. Contrary to the submissions by Rabow Company Ltd, their application for injunction and Anton piller orders was dismissed on 26.9.24. There is, therefore, no order of injunction in their favour.
39. Of greater value is that, the application by the 1<sup>st</sup> defendant-one of the plaintiffs in E491/24- was successful and they have orders of injunction in their favour. See the orders by the court of 26.9.24 set out above. But more specifically, the court noted that: -

On irreparable loss, it is clear that if the business of the plaintiffs use of its intellectual property is not safeguarded, it may irredeemably suffer. The loss may not be compensated by an award of damages.

Accordingly, the Court finds that the plaintiffs are likely to suffer irreparable loss and damage.

In any event, the balance of convenience tilts in favour of allowing the plaintiffs to continue trading undisturbed.
40. It is notable that, on prima facie evidence adduced, the ruling of 26<sup>th</sup> September 2024 noted that the “Bangbet” trademark had been assigned to the 1<sup>st</sup> defendant.
41. The order of the court issued on 16<sup>th</sup> January, 2025 prevented the defendants from trading under ‘Bangbet’ as long as they are not licenced. This is in the context of the case. Thus, in the circumstances of this case, disobedience of the court order is a wild thought.
42. There is, therefore, no basis for preventing the withdrawal of the application by the Interested party.
43. Therefore, the application can be withdrawn.

### **Injunctive relief**

44. On whether the plaintiff has met the threshold for an injunction, I am guided by the principles established in *Giella v Cassman Brown* [supra] and as seen within the broader constitutional principles of justice. The plaintiff ought to establish a prima facie case with a probability of success; irreparable harm that cannot be compensated by damages and that the balance of convenience tilts in their favour.
45. Prima facie case means a case where the material presented shows infringement of a right. *Mrao Ltd v First American Bank of Kenya Ltd* [supra]
46. The underlying dispute is with regard to the ownership of a trademark “Bangbet”. Through the ruling dated 26<sup>th</sup> September 2024, the court found that at the time, the trademark “Bangbet” was registered in favour of the 1<sup>st</sup> defendant, Lucky Bus DMCC. Hence, the court declined to issue an injunction to the plaintiff because it had not established a prima facie case.



47. The plaintiffs seem to base their quest for suspension or revocation of the licence issued to the 1<sup>st</sup> defendant on the orders of 16.1.25. Those orders should be seen within the foundational context of the ruling of 26.9.24 and were so couched.
48. Other than claiming that they are holders of a licence to trade under ‘Bangbet’, there is no fresh materials which may prompt the court to depart from the findings made on 26.9.24 (Mabeya J). In the absence of changed circumstances, it is not plausible, on prima facie basis to find that a right has been infringed and issue injunctive reliefs sought by the plaintiffs. Let the dispute on the trade mark be fast-tracked so that the rights of the parties thereto are ascertained.
49. There being no prima facie case established by the plaintiff, it is not necessary to consider the two other conditions. Nevertheless, the court is aware of the argument that the licence the plaintiffs are holding is expiring on 30.6.25 and that they have to apply in accordance with the applicable law. Thus, tilting the balance of convenience towards rejection of the application.

### **Disposal**

50. In conclusion, I make the following orders: -
1. The plaintiff’s application dated 2<sup>nd</sup> February 2025 is dismissed with costs for want of merit.
  2. Interested party’s application dated 14<sup>th</sup> January, 2025, marked as withdrawn with no orders as to costs.
  3. Parties to fast-track the hearing of the main case.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 30<sup>TH</sup> DAY OF JUNE, 2025**

.....

**F. GIKONYO M**

**JUDGE**

In the presence of: -

Wambua, Maina Mburu & Muturi for plaintiff

Kiplagat/Mwangi for Gumbo/Kipsosgei for 1<sup>st</sup> and 2<sup>nd</sup> respondent

Bett for Mutinda for Interested party

Mwai for Ms Kariuki for 2<sup>nd</sup> Interested party

CA Kinyua

