



**Sobetra Uganda Limited v Stanbic Bank Kenya Limited & another (Commercial Case E030 of 2024) [2025] KEHC 9077 (KLR) (Commercial and Tax) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E030 OF 2024  
JWW MONG'ARE, J  
JUNE 26, 2025**

**BETWEEN**

**SOBETRA UGANDA LIMITED ..... PLAINTIFF**

**AND**

**STANBIC BANK KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE MUIRURU T/A PHILLIPHS INTERNATIONAL AUCTIONEERS. 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff, Sobetra Uganda Limited (Sobetra) moved this court by a plaint filed on 26<sup>th</sup> January 2024 seeking various reliefs against the Defendants, Stanbic Bank Kenya Limited (Stanbic) and George Muiruri t/a Phillips International Auctioneers (The Auctioneer). Alongside the Plaint and by a certificate of urgency filed on the same date, the Plaintiff filed a Notice of Motion Application under Section 1A and 1B, 3 and 3A of the *Civil Procedure Act* and order 40 Rules 1 & 2 of the Civil Procedure Rules seeking the following reliefs;

1. Spent
2. Spent
3. Spent
4. That pending the hearing and determination of this suit an injunction be and is hereby issued restraining the Defendants either by themselves or through their agents, servants, or employees from attaching, selling, disposing off, transferring, using, dealing with and/ or interfering with the Plaintiff's possession of motor vehicle registration number KCU 114X, KCU 818Z, KDE 366E, KDE 046K, KDE 13E, KDC 077K, KDC 486G, KDG 244Q, & KDG 265H,



KHMA 004T Loader, KHMA 975S Excavator, KHMA 550S Crawler, KHMA 031T Loader & KTTC 910D Tractor.

5. That the purported proclamation of 22<sup>nd</sup> January 2024 by Messrs Phillips International Auctioneers of Motor Vehicle Registration numbers Motor Vehicle registration number KCU 114X, KCU 818Z, KDE 366E, KDE 046K, KDE 13E, KDC 077K, KDC 486G, KDG 244Q, & KDG 265H, KHMA 004T Loader, KHMA 975S Excavator, KHMA 550S Crawler, KHMA 031T Loader & KTTC 910D Tractor be lifted and or set aside.
  6. That an order do issue compelling the Defendant to furnish the Plaintiff with statements of Account for all loan facilities or financial accommodation given by the Defendant to the Plaintiff.
  7. That an order do issue directing that Accounts be taken and the Defendant be restrained from taking any other or further steps or mechanism to realize the sums outstanding until the sum owing from the Plaintiff is established or ascertained.
  8. That costs of this Application be provided for.
2. The application is supported by the grounds set out on its face and the supporting and further affidavits Petrangeli Giorgio Caesar Antonio sworn on 26<sup>th</sup> January 2024 and 10<sup>th</sup> April 2024 respectively. It is opposed and the Defendants filed their defence and counterclaim and also filed a Notice of Motion Application on 23<sup>rd</sup> February 2024 seeking the following reliefs;
1. Spent
  2. The Court do issue a warrant of arrest against the 2<sup>nd</sup> and 5<sup>th</sup> Defendants in the Counterclaim to show cause why they should not furnish security for the full debt of Kshs. 542,988,239 and USD 147,658 for their appearance in court and an order that they deposit their passports in court pending the furnishing of security.
  3. ICM SPA, Kilifi Water and Sewerage Company Lt, Kwale Water and Sewerage Company be restrained from remitting any funds to the 1<sup>st</sup> Defendant and be ordered to pay Stanbic Bank Kenya Ltd pursuant to the Order of the Court and the Notice of Assignments of all monies due to Sobetra Uganda Limited into the following account;  
  
Account name; Sobetra Uganda Limited  
  
Account Number ; 0100006442662  
  
Bank; Stanbic Bank Kenya Limited  
  
Branch; Upperhill.
  4. A temporary Injunction be granted restraining the Defendants in the Counterclaim namely;



No.	Defendants	Identification Particulars/ Passport
(a)	Sobetra Uganda Limited	Fc-g6tq2j
(b)	Hezi Yehezkel Bezalel	34153987
(c)	Barbara Rosette Calligaris	Ya1920491
(d)	Giorgio Petrangeli	Ya7116923
(e)	Giorgio Caesar Antonio	YB1501277

Whether by themselves or their agents or servants or otherwise howsoever from selling, transferring or in any manner dealing with any shares they own in any listed company in the Nairobi Stock Exchange and the Central Depository and Settlement Corporation do within three (3) days upon service of this order, freeze any and all of the Accounts in the names of the Defendants and do furnish the Plaintiffs' Advocates and the Court with a complete record of all shares owned by the Defendant, pending full hearing of this application.

5. ICM SPA, Kilifi Water and Sewerage Company Ltd, Kwale Water and Sewerage Company be ordered to file under oath details of;
  - a. All monies paid to Sobetra Uganda Limited for each executed contract and details of the bank account monies were paid to.
  - b. The balance of all monies pending to be paid to Sobetra Uganda Limited and the due dates the monies will be paid.
6. The 1<sup>st</sup> Defendant in the Counterclaim be ordered to remit all future monies paid from various contracts to the following account in part payment of Kshs. 542,988,239 and USD 147,658;

Account name; Sobetra Uganda Limited  
Account Number; 0100006442662  
Bank; Stanbic Bank Kenya Limited  
Branch; Upperhill.
7. A temporary injunction do issue restraining the Defendants in the Counterclaim and each of them whether by themselves or by their servants, agents, employees, advocates or otherwise from removing, transferring any of their assets whatsoever, including land, shares and monies deposited in their accounts in all and any banks operating in Kenya, from the jurisdiction of this court or disposing, interfering with, charging or otherwise dealing with them in any way whatsoever, pending full hearing of this application.
8. An order be issued against the 1<sup>st</sup> Defendant in the Counterclaim for production within 7 days of the order of the court;
  - a. An account and delivery of Kshs. 542,988,239 and USD 147,658 due from ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd and any other person remitting funds to the 1<sup>st</sup> Defendant.



- b. Delivery of Complete records and bank accounts details together with supporting documents of all payments received from contracts with ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd and the balance of outstanding payments.
    - c. Complete Bank Statements relating to all banks accounts where funds were diverted in respect of contract sums paid by ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd.
    - d. Evidence under oath of all monies paid by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant to thee 2<sup>nd</sup> to 5<sup>th</sup> Defendants whether in Kenya or outside Kenya.
  9. The Injunctions sought above be granted pending full hearing and determination of this suit.
  10. Any further relief that the Court deems fit in the interest of justice.
  11. The Costs of this Application be the Plaintiff in the Counterclaim.
3. The Application was supported by the grounds set out on its face and the supporting affidavit of COLLINS SABATIA sworn on 23<sup>rd</sup> February 2025. Both parties filed their respective submissions which I have carefully considered.
  4. It is common ground that the parties herein enjoyed a bank- client relationship and that the Plaintiff in the main suit was advanced by the 1<sup>st</sup> Defendant several loan facilities as set out hereunder;
    - a. An overdraft facility in the sum of Kshs.500,000
    - b. An invoice discounting facility in the sum of US Dollars 4,000,000
    - c. A Guarantee facility in the sum of Kshs. 10,000,000
    - d. A Guarantee facility in the sum off USD 1,500,000
    - e. An asset Finance Facility in the sum USD 1,000,000
    - f. A forward Exchange Contracts facility in the sum of USD 387,055
  5. The above facilities were to facilitate the performance of various contracts by the Plaintiff and it is common ground that funds to service the same was to be paid by the plaintiff from contracts issued to them by ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd. The plaintiff confirms that it has not been paid the said sums and hence the facilities are indeed in arrears.
  6. I have carefully considered the two applications by both the Plaintiff in the Main suit and the 1<sup>st</sup> Defendant who has also filed its application and Counterclaim in addition to the Notice of Motion seeking various prayers as set out above. I note from the onset that the application by the Plaintiff seeks an interim injunction to restrain the Defendants from proceeding to execute and attach its various vehicles that are spread across various project sites within the country and even some are located outside the country.
  7. I will first proceed to consider the Plaintiff's Application of 26<sup>th</sup> January 2024 to determine if the said application has established the principles that the court is required to consider before granting such reliefs. I do not think it is in dispute that for an order of injunction to issue, the Plaintiff is required to satisfy the conditions set out in the case of Giella v Cassman Brown & Co., Ltd. [1973] E.A. 358, firstly, the applicant must start by demonstrating it has a prima facie case with a probability of success; that it



will suffer irreparable injury which would not adequately be compensated by an award of damages and that; if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially which means that if it does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration (see *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR))

8. The parties also agree that what constitutes “a prima facie case” was set out by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) as follows:

A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

9. On prima facie case, I note that the Plaintiff while admitting to being indebted to the Defendant has presented before this court what it has done or attempted to do in order to ensure that these funds advanced to it are repaid. The Plaintiff seeks to restrain the Defendant from attaching its motor vehicles that were used to secure the loan facilities being motor vehicle registration number KCU 114X, KCU 818Z, KDE 366E, KDE 046K, KDE 13E, KDC 077K, KDC 486G, KDG 244Q, & KDG 265H, KHMA 004T LOADER, KHMA 975S EXCAVATOR, KHMA 550S Crawler, KHMA 031T LOADER & KTTC 910D Tractor that were proclaimed by the 2<sup>nd</sup> Defendant pursuant to instructions by the 1<sup>st</sup> Defendant.
10. The Plaintiff has argued that attaching these various motor vehicles will cripple its operations in various projects that it is undertaking across the Country and elsewhere and that it is not a contested fact that proceeds from the various projects are to be applied to the Defendants debt. I note from its own application and the replying affidavit that the 1<sup>st</sup> Defendant acknowledges that indeed these facilities were pegged on various contracts awarded to the Plaintiff and has in its own application asked that the court orders that proceeds from these projects be remitted to it to satisfy the debt due from the Plaintiff.
11. Both the Defendant and the Plaintiff confirm to this court that the facilities are to be paid with proceeds from ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd. It is the Plaintiff’s case that it is yet to receive the payments expected from these projects and that noting that the same are still ongoing, allowing the proclamation to go on will interfere with its performance and render it unable to complete the same which may lead to the contracts being cancelled. In any event, the various motor vehicles, according to the Plaintiff, if auctioned have a forced sale of the same of the said motor vehicles would only fetch about Kshs. 30,000,000 which would not satisfy the Defendants debt. From the foregoing I am satisfied that the Plaintiff has established a prima facie case and therefore met the first principle as established in *Giella*.
12. Turning to the second principle as to whether failure by the Court to grant the injunctive relief would occasion the Plaintiff irreparable harm, the Plaintiff has urged the the court to be guided by finding on the same in *HEZRON KAMAU GICHURU V KIANJOYA ENTERPREISES* (2022) eKLR cited by the Plaintiff where the court stated that; “the judicial decision of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai*(2018) eKLR provides an explanation as to what is meant by irreparable injury and it states; -irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”



13. From the averments made by the Plaintiff, I am satisfied that the Plaintiff has demonstrated that it is engaged in various projects in various parts of the country and has contractual obligations in South Sudan, Uganda, Tanzania and the Democratic Republic of Congo where these motor vehicles are spread across and are in use for the performance of the said contracts. In its effort to satisfy the debt, the Plaintiff avers that it has offered to direct the proceeds from a contract it is performing in the Comoros and from which it expects to receive in excess USD 13 Million towards the settling of the 1<sup>st</sup> Defendant's debt.
14. The Plaintiff argues that an interruption of these projects will occasion it irreparable harm and will cripple its operations. Looking at the material presented to this court, I agree with the Plaintiff that these motor vehicles are indeed its tools of trade and are necessary for the performance of its contractual obligations including the ones in which the 1st Defendant has a stake such as the contracts with ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd. I therefore find that the Plaintiff has met this threshold on the second principle.
15. In *Nguruman Ltd*(supra)the Court of Appeal stated that for a grant of an order of injunction to issue, the three principles must be sequentially satisfied such that if the first one is not met, the court need not consider the other two. From the analysis above, I note that the first two principles have been met and therefore the court is not in doubt that the balance of convenience tilts in favour of granting the prayers sought. I am however persuaded by the arguments by the Defendant in the responses it filed towards this application and its own application before this court which I note that the same has not been disputed by the Plaintiff, that these facilities were to be repaid with proceeds from thee Plaintiff's contracts with ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd which are yet to be settled. In order to safeguard the interests of the Defendant who have made it possible for the Plaintiff to carry out its obligations under the said contracts by availing the necessary resources, I direct that the Plaintiff do ensure that these proceeds are remitted to the Defendant bank in the shortest time possible to settle the outstanding debts that is due and owing to the Defendant and to ensure that the same is done not later than 120 days from the date of this ruling.
16. I now turn to the application of 23<sup>rd</sup> February 2024 by the 1<sup>st</sup> Defendant who is now the Plaintiff in the Counterclaim. I note that in bringing its counterclaim to the suit filed by the Plaintiff the 1<sup>st</sup> Defendant has now sought to include the 2<sup>nd</sup> to the 5<sup>th</sup> Defendants who were not parties in the original suit filed by the Plaintiff and seeks among other prayers that the 2<sup>nd</sup> to the 5<sup>th</sup> Defendants be ordered to furnish security for the payment of Kshs. 543,988, 239 and USD 147,658. The 1<sup>st</sup> Defendant also has asked the Court that it be allowed to attach the expected proceeds due to the Plaintiff from contracts with ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd. In addition, the Defendant has sought to have the 2<sup>nd</sup> to 5<sup>th</sup> Defendants be restrained from disposing or transferring any of their assets in Kenya held in the form of shares, land and monies deposited in bank accounts held in all banks in Kenya from the jurisdiction of this court.
17. I note that the argument put forward by the Defendant is that the Plaintiff in the original suit and the 2<sup>nd</sup> to 5<sup>th</sup> Defendants are foreign nationals and are capable of removing themselves from the jurisdiction of this court leaving the Defendant Bank exposed. In opposing this application, the Plaintiff in its affidavit in reply has argued that at all material times, the Defendant Bank was always aware that the Plaintiff was a foreign registered company whose directors were not citizens of Kenya and entered into the loan agreements fully conversant of that position. It is therefore not a ground for grant of injunctive reliefs and other restraining orders to argue that the Defendants are foreigners.
18. In addition, I note that the 2<sup>nd</sup> to the 5<sup>th</sup> Defendants did not participate in these proceedings and did not, as parties herein file any responses to the Defendant's application. It was also not demonstrated to



the Court the said parties had been served with the pleadings and the motion before the court to accord them an opportunity to respond appropriately. Order 7 rule 8, 9, 10 and 11 of the Civil Procedure Rules provides as follows;

“ 8. Title of counterclaim [Order 7, rule 8]

Where a Defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff, together with any other person or persons, he shall add to the title of his defence a further title similar to the title in a plaint, setting forth the names of all persons who, if such counterclaim were to be enforced by cross-action, would be Defendants to such cross-action, and shall deliver to the court his defence for service on such of them as are parties to the action together with his defence for service on the plaintiff within the period within which he is required to file his defence.

9. Claim against person not party [Order 7, rule 9]

Where any such person as is mentioned in rule 8 is not a party to the suit, he shall be summoned to appear by being served with a copy of the defence, which shall be served in accordance with the rules for regulating service of summons.

10. Appearance by added parties [Order 7, rule 10]

Any person not already a party to the suit who is served with a defence and counterclaim as aforesaid must appear thereto as if he had been served with a summons to appear in the suit.

11. Reply to counterclaim [Order 7, rule 11]

Any person named in a defence as a party to a counterclaim thereby made may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him of the counterclaim and shall serve a copy thereof on all parties to the suit.”

19. My understanding of the above provisions of the law is that where a party has been enjoined to a suit as a Defendant in a counterclaim, then the party seeking to enjoin him or her must ensure that the said party has been served and notified to come on record and put forth his or her defence. From the record and submissions by the parties, it is clear to the court that the 2<sup>nd</sup> to 5<sup>th</sup> Defendant did get an opportunity to defend themselves or put forward a response to the application filed by the Defendant/Counterclaimant in this suit. *The Constitution* of Kenya under article 48 and 50 of the commands the courts as follows “Access to justice. 48. The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

While article 50 (1) provides as follows;

Fair hearing. 50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

20. Having satisfied myself that the 2<sup>nd</sup> to the 5<sup>th</sup> Defendants in the counterclaim did not participate in the present application either in person or through a legal counsel and noting that no explanation was provided to the court as to whether or not they had been notified of the proceedings against them, in my view, it is therefore not prudent for this court to make any orders that may negatively impact the 2<sup>nd</sup> to the 5<sup>th</sup> Defendants and as such, the court is disinclined to grant the orders sought therein.



**Conclusion**

- 21. In conclusion I find merit in the Plaintiff's application of 26<sup>th</sup> January 2024 and I allow the same. I however direct that the Plaintiff do deposit the proceeds of the contracts from the its contract with ICM SPA, Kilifi Water and Sewerage Company limited, Kwale Water and Sewerage Company Ltd to its account with the 1<sup>st</sup> Defendant to be applied to redeem the Loan facilities subject matter of these proceedings. The Plaintiff has 120 days to ensure that these payments are received by the Defendant from. Failing which the 1st Defendant is at liberty to move the court appropriately.
- 22. On the application by the 1<sup>st</sup> Defendant of 23<sup>rd</sup> February 2024, I find that parties against were not served and find that it is without merit and dismiss the same. I direct that if the 1<sup>st</sup> Defendant wishes to have the Court make orders against the 2<sup>nd</sup> to 5<sup>th</sup> Defendants in the Counterclaim, the said parties be served and be allowed to respond to any motions brought against them in the interest of justice.
- 23. On costs, I find that although the Plaintiff has been successful in its application before this court, it is still indebted to the 1<sup>st</sup> Defendant. I direct that each party bear its own costs of these applications. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JUNE 2025.**

.....

**J.W.W. MONGARE**

**JUDGE**

**IN THE PRESENCE OF**

Mr. Kelvin Mogeni for the Applicant/Plaintiff

Mr. Allen Gichuhi SC for the Respondent/Defendant

Amos- Court Assistant

