



Aesthetics Africa Limited v Dawa Life Sciences Limited & another (Commercial Case E169 of 2025) [2025] KEHC 12469 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E169 OF 2025
JWW MONG'ARE, J
SEPTEMBER 1, 2025**

BETWEEN

AESTHETICS AFRICA LIMITED PLAINTIFF

AND

DAWA LIFE SCIENCES LIMITED 1ST DEFENDANT

SACHI MOHINDRA T/A SKINTECH PHARMA LIMITED 2ND DEFENDANT

RULING

1. By an application dated 17th March 2025, the Plaintiff (“Aesthetics Africa”) seeks interim injunction orders to stop the Defendants from acting as the new distributors of HydraFacial LLC , using the Aesthetics Africa client data, contacting its clients, or entering into any new distribution agreements, pending the hearing and determination of this case. Supported by affidavits of its director, Dr. Pranav Pancholi sworn on 17th March 2025 and 28th April 2025, Aesthetics Africa contends that it had an exclusive 11-year distributorship agreement between 2014 and 2025 with HydraFacial for Kenya and other African territories.
2. Aesthetics Africa avers that it invested heavily in building the brand through training, opening clinics, securing regulatory approvals, marketing, and hosting events but that on 23rd January 2025, HydraFacial, through its lawyers, terminated the agreement without providing any reasons, only giving the contractually required 60-day notice. That just 18 days later, on 10th February 2025, HydraFacial appointed the 2nd Defendant (“Skintech”) as the new distributor, effectively cutting Aesthetics Africa out before the 60-day notice period expired and that HydraFacial also began sharing Aesthetics Africa’s proprietary client data with the new distributor.
3. Aesthetics Africa alleges the 2nd Defendant, Sachi Mohindra, orchestrated this by first proposing a partnership in 2023, which was rejected, and then allegedly maligning Aesthetics Africa to



- HydraFacial to secure the distributorship for themselves. Aesthetic Africa claims the Defendants are unqualified and that they are conducting unauthorized medical trainings without regulatory oversight, and endangering public health with unregulated procedures. Aesthetic Africa argues it will suffer significant financial loss, reputational damage, and their clients will be exposed to risk if the injunctions are not granted.
4. The 1st Defendant (“Dawa Life”) responded to the application through the replying affidavit of its Managing Director, Dr. Ajaykumar Shanabhai Patel, sworn on 4th April 2025. It emphasizes that it is a distinct and separate legal entity from Skintech and that it has no legal or contractual relationship with Aesthetics Africa and that it has never entered into any agreement to distribute or sell HydraFacial products in Kenya. It asserts that that it has no knowledge of the matter in dispute, which revolves around the HydraFacial distributorship and argues that the application is misconceived and unmerited as the orders sought do not affect its actions. It seeks that the application be dismissed with costs and states on a without prejudice basis that even if there was a breach of contract between Aesthetics Africa and HydraFacial, it is quantifiable, and an award of monetary damages would be a sufficient remedy, making the drastic measure of an injunction unnecessary.
 5. On its part, Skintech has responded to the application through the replying affidavit of its director, Reema Shah, sworn on 4th April 2025. It points out a technical flaw in Aesthetics Africa’s suit by stating that it is unclear whether the 2nd Defendant is meant to be Sachi Mohindra or Skintech as they are separate legal entities. On the substance of the application, Skintech depones that Aesthetics Africa’s distributorship with HydraFacial was non-exclusive and that this directly contradicts Aesthetic Africa’s foundational claim of having an exclusive agreement and Skintech contends that this is a material non-disclosure by Aesthetics Africa when obtaining the initial ex parte orders.
 6. Skintech avers that the termination of Aesthetics Africa’s agreement was done via written notice, as per the contract and Skintech confirms that it has a valid Sales and Distribution Agreement with HydraFacial, appointing it as the distributor for East Africa. Skintech states that the application fails the 3-tier test of an injunction as set out in the case of *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358 as no prima facie case has been established since Aesthetics Africa’s case is weak because its contract was non-exclusive and lawfully terminated. That the core of the dispute is between Aesthetics Africa and HydraFacial and not the Defendants.
 7. Skintech further states that any loss suffered by Aesthetics Africa from the termination is quantifiable and can be remedied by an award of damages from HydraFacial and that the balance weighs against granting the injunction. Skintech claims that it has already incurred significant costs of placing several orders of the HydraFacial product, hiring staff and that it is suffering business disruption due to the interim court order in place. For these reasons, Skintech also urges the court to dismiss the application with costs.
 8. In addition to the pleadings, the parties have supplemented their arguments by way of written submissions which are on record and I will be making relevant references to the same in my analysis and determination below

Analysis and Determination

9. Even though Skintech has raised technical objections on the application, I find that it will be in the interest of justice and completeness to deal with its substance and merits. The main issue for the court’s determination is whether the injunctive orders sought by the Aesthetics Africa should be granted. The parties agree that Aesthetics Africa needs to satisfy the conditions set out in *Giella*(supra), that is, demonstrate 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 Aesthetics Africa is expected to surmount sequentially which means that if it do 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))

10. A prima facie flows from what is pleaded in the plaint and includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court 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 (see *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR)). I have gone through Aesthetics Africa’s plaint which mirrors its arguments highlighted in the introductory part and I am inclined to agree with the Defendants that Aesthetics Africa’s grievance appears to be more with HydraFacial rather than the Defendants. Aesthetics Africa laments the manner in which its agreement with HydraFacial was terminated, terming it unlawful, unconscionable, unreasonable and unjustifiable. That HydraFacial’s appointment of the Defendants as distributors is a breach of their agreement and that Aesthetics Africa has suffered losses as a result. It further accuses HydraFacial of contravening section 21 of the Competitions Act by sharing trade secrets and client lists with the Defendants. HydraFacial, a company admittedly incorporated and based in the United States with its headquarters in Long Beach, California, is not a party in this suit and even if Aesthetics Africa have a prima facie case against it, this court cannot issue an adverse order against a third party who is not a party to the suit as this would amount to a breach of the rules of natural justice (see *Magodo v Magodo* [2023] KEHC 2448 (KLR)). In any event, I agree with the Defendants that the allegations by Aesthetics Africa on unlawful termination of its agreement with HydraFacial and breach of the same is quantifiable and can always be assuaged by an award of damages (See *Eso Kenya Ltd v Mark Makwata Okiya* [1992] KECA 53 (KLR)).
11. The only allegations in the plaint that are directly pointed at the Defendants are that they engaged in unfair trade practices by orchestrating the termination of the contract with HydraFacial by first proposing a partnership in 2023, which was rejected, and then allegedly maligning Aesthetics Africa to HydraFacial to secure the distributorship for themselves. Further, that the Defendants are unqualified, conducting unauthorized medical trainings without regulatory oversight, and endangering public health with unregulated procedures.
12. Whereas Aesthetics Africa has annexed email threads showing the Skintech contacting clients, offering lower prices and stating to be the new distributor, I note that this is being done after HydraFacial communicated that it had terminated the agreement with Aesthetics Africa and that it was no longer its distributor and that Skintech had been appointed as the new distributor. One cannot really blame Skintech for “diving in” and getting down to it once it was appointed as a distributor of the HydraFacial products and when it was informed that the distributorship agreement with Aesthetics Africa had been terminated. Skintech also annexed a certification from HydraFacial’s General Counsel stating that Aesthetics Africa’s distributorship was non-exclusive and therefore, the latter’s argument that Skintech was “poaching” its clients does not arise. It has also not been controverted that Skintech has a Sales and Distribution Agreement with HydraFacial as evidenced by the letter from HydraFacial’s Director of Sales appointing it as the distributor for East Africa. Further, whereas Aesthetics Africa has annexed a complaint letter written to the Pharmacy and Poisons Board alleging the Defendants are illegally advertising a “Beginner Botox Workshop” and that they are unqualified, there is no response from the Board affirming the allegations and remains just that, allegations.



13. From the above, it is clear that Aesthetics Africa have no prima facie case against the Defendants and I agree that any loss suffered by it is quantifiable and awardable as damages. I also agree that the balance of convenience weighs against granting the injunction as Skintech, as the appointed distributor, has demonstrated that it has already incurred significant costs including placing a \$29,290 order, that it has hired staff as evidenced by the pay slips and that it is indeed suffering business disruption due to the interim orders of the court.

Conclusion & Disposition

14. In the foregoing, I now dismiss the Plaintiff's application dated 17th March 2025 with costs. The interim orders in place now stand vacated and discharged. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2025

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J.W.W. MONGARE

JUDGE

In the presence of

Ms. Gacau holding for Mr. Kuloba for the Plaintiff/Applicant.

Mr. Samuel Ochieng holding Brief for Mr. Ohaga SC for the Defendants/Respondents.

Amos- Court Assistant

