

KENYA / JUDGMENT

Olubakaya v Simiyu & another [2026] KEHC 13488 (KLR)

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COURT

High Court

BEFORE

JWW Mong'are

CASE / FILE NUMBER

Commercial Petition E007 of 2025

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Olubakaya v Simiyu & another (Commercial Petition E007 of 2025) [2026] KEHC 13488 (KLR) (14 September 2026) (Ruling) Neutral citation:

[2026] KEHC 13488 (KLR) Republic of Kenya In the High Court at Machakos Commercial Petition E007 of 2025 JWW Mong'are, J September 14, 2026 Between Martin Omukuba Olubakaya Petitioner and Judith Nandacha Simiyu 1 st Respondent Stop N Play Cre'che Services Limited 2 nd Respondent

Ruling

1. By the Notice of Motion dated 6 th November 2025, the Respondents seek inter alia an injunction to restrain the Petitioner from proceeding with any other civil or criminal proceedings against the 1 st Respondent concerning motor vehicles KCN U, KCM L, KCG C and KCS W until the final determination of the main suit herein; an order to cite the Petitioner for contempt of court for interfering with active judicial proceedings, disobeying the court order of 29 th April 2025 to open a joint account; an order summoning the Petitioner to explain why he should not be cited for contempt and that he should be punished accordingly for contempt. 2. The application is supported by grounds on its face and the affidavits of the 1 st Respondent sworn on 6 th November 2025 and 19 th November 2025. It is opposed by the Petitioner through his replying affidavit sworn on 17 th November 2025. The application was canvassed by way of written submissions which are on record and I have considered the same together with the pleadings and in my analysis and determination below, I will make relevant references to them.

Analysis and Determination

3. From the parties' submissions, the main issues for the court's determination are whether an injunction should issue restraining the Petitioner from proceeding with any other civil or criminal proceedings against the 1st Respondent over the subject motor vehicles until the final determination of the main suit and whether the Petitioner should be cited and punished for contempt of the court's orders of 29th April 2025. 4. On the injunction, I am in agreement with the Petitioner's submissions that the principles of granting the said order were settled in the locus classicus case of *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358. For the Respondents to obtain an injunction, they must demonstrate that they have a prima facie case with a probability of success, they must demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted and if the court is in doubt show that the balance of convenience is in his favour. 5. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR), the Court of Appeal reiterated these conditions and further clarified that they are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. This means that if the applicant does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions. 6. As to what constitutes a prima facie case, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) explained that 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 which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter." 7. The Respondents' case is that the Petitioner used a court order from a Magistrate's Court in Nairobi, Misc. Application No. E2545 of 2025 to have an auctioneer repossess the four motor vehicles on 6th November 2025 which repossession the Respondents aver was illegal because the Petitioner did not follow due process and the vehicles were crucial for their daily business operations. The Respondents accuse the Respondent of forum shopping and abuse of court process as they note that the suit regarding these vehicles is pending before this court but instead of waiting for that ruling, the Petitioner initiated proceedings in the court in Milimani, Nairobi to get an order for repossession. 8. The Respondents allege that after they obtained a temporary injunction in the Magistrate's Court on 7th November 2025 to have the motor vehicles released, the Petitioner resorted to using the police and that the Director of Criminal Investigations (DCI) at Central Police Station refused to release the vehicles and initiated a criminal investigation against the 1st Respondent. She depones she was forced to record a statement without her advocate and was ordered to return for a "settlement," which she views as harassment to pressure her into an agreement. 9. In response, the Petitioner denies that the repossession of the motor vehicles was illegal and depones it was carried out pursuant to a valid court order issued on 13th October 2025. He further clarifies that the vehicles are not in his possession but are lawfully held by the DCI as exhibits in an ongoing criminal investigation. He points out that the 1st Respondent has one of the vehicles, KCS W

in her possession and that the repossession was necessary to protect the vehicles from unlawful disposal. The Petitioner contends that this concern was justified because the 1 st Respondent had illegally and irregularly lifted caveats he had placed on the vehicles with the NTSA, that she had previously sold another company vehicle KCQ Z without his consent or a board resolution and that there was a real risk she would dispose of the remaining vehicles. 10. The Petitioner denies the allegation of forum shopping, stating that the main petition before this court concerns oppression of members, while the other matter is a separate criminal complaint he was entitled to lodge as a citizen. The Petitioner accuses the 1 st Respondent of running a personal business using company vehicles without remitting revenue to the company. He states that parents' transport fees are deposited into her personal accounts, constituting misappropriation of company funds. He also notes that schools are currently closed, undermining her claim of "irreparable harm" to students. 11. The Petitioner further denies using the police to harass the 1 st Respondent, stating he merely lodged a legitimate complaint after discovering the lifted caveats. He asserts that he has no control over the DCI's independent investigation and that the interim order obtained by the 1 st Respondent did not direct the release of the vehicles. He refutes her claims of being forced to record a statement without an advocate, stating she attended voluntarily and was free to have legal representation and for the aforementioned reasons, she urges the court to dismiss the application with costs, stating that it is frivolous, malicious and aimed at diverting attention from the 1 st Respondent's own misconduct and the serious criminal investigations against her. 12. Having gone through the pleadings and submissions, it is important to note and I believe the parties are aware, that this is not the first time the issue of seeking an injunction has been brought before the court. The Petitioner sought a similar order through his application dated 6 th March 2025 where the court delivered a ruling on 18 th December 2025. The court found that the Petitioner had established a prima facie case to warrant preservation orders but declined to order the impounding of vehicles or grant the type of sweeping mandatory injunction the Respondents now seek. To now grant an injunction restraining the Petitioner from pursuing other legal or criminal proceedings would contradict the court's own finding that his actions were, at least in part, justified and lawful. 13. In any event, I find that the Respondents have not satisfied the aforementioned conditions for the grant of an injunction. I am in agreement with the Petitioner's submission that criminal and civil proceedings are separate and distinct processes and that the Miscellaneous Application initiated by the auctioneer was a procedural step to seek police assistance for the safe custody of vehicles, not a substantive suit seeking the same relief as the petition herein. The criminal complaint is a report to the DCI regarding suspected criminal activity and the Petitioner has a constitutional and statutory right to report an offence. Indeed, section 193A of the Criminal Procedure Code explicitly allows for concurrent civil and criminal proceedings and the pendency of a civil matter is not a bar to criminal prosecution (see *Republic v Director of Public Prosecution & another; Rono & 3 others (Ex parte Applicants)* (Judicial Review Application E003 of 2025) [2026] KEHC 6356 (KLR)) 14. Furthermore, the vehicles are already in the lawful custody of the DCI as exhibits in an ongoing investigation. The Respondents have not demonstrated that the continuation

of these separate proceedings would cause them irreparable harm that cannot be compensated by damages or addressed in the main suit. I also find that granting the injunction would effectively give the Respondents immunity from investigation and stifle the Petitioner's legitimate right to protect company assets and report suspected crimes which would be a gross injustice and an abuse of the court's process. 15. On contempt, the Respondents alleged tow grounds; interference with active judicial proceedings by repossessing the vehicles and disobedience of the court order of 29 th April 2025 to open a joint account. However, I find that none of these grounds is sustainable because the repossession was carried out pursuant to a valid court order dated 13 th October 2025. A person acting in compliance with a court order cannot be held in contempt for doing so and the vehicles were taken for safe custody at a police station to prevent their unlawful disposal, which was a concern that the court in its ruling of 18 th December 2025 acknowledged was legitimate, especially given the prior unauthorized sale of another company vehicle, KCQ *Z. 16. I find therefore that the Petitioner's actions did not interfere with the court's ability to deliver its ruling on 20 th November 2025 as the ruling was delivered and the DCI's independent investigation did not pre-empt or undermine the court's jurisdiction. As Mativo J., (as he was then) held in Samuel Roro Gicheru & another v O.C.S. Nanyuki Police Station & another [2015] KEHC 1786 (KLR) this court will only intervene in criminal proceedings where there is clear evidence of malice or ulterior motive, which the Respondents failed to prove in this case. 17. On disobedience of the order of 29 th April 2025 of opening a joint account, I have gone through the pleadings and I note that the evidence clearly shows that it is the 1 st Respondent who frustrated the process, not the Petitioner. On 13 th May 2025, the Petitioner's advocate proposed opening the account at I&M Bank, to which the 1 st Respondent's advocate agreed. Both parties signed the account opening forms, and the Petitioner's advocate submitted them to the bank. When the bank contacted the 1 st Respondent for confirmation, she instructed the bank not to proceed with the account opening. The Petitioner's advocate wrote to the 1 st Respondent's advocate on 2 nd July 2025, stating: "We submitted the duly executed bank account opening form to the bank. However, we understand that your client received a call from the bank this morning and firmly stated that she is not proceeding with the account opening. Her conduct is in direct violation of the Court Order" 18. After being confronted, the 1 st Respondent changed her position and insisted that both directors must be physically present at the bank to sign. The Petitioner complied by travelling to the I&M Bank Kenyatta Avenue Branch, presented himself, signed all documents, and was assisted by a bank officer named Terrence as per the email of 12 th August 2025. It was agreed that the 1 st Respondent would then attend the same branch to sign her part, however, when she arrived, she refused to sign the forms before Terrence and instead insisted that she would not sign unless the Petitioner was physically present again. The Petitioner's advocate wrote to the bank on 23 rd October 2025 seeking clarification, noting that the Petitioner had already fully complied 19. Whereas the bank confirmed in a letter dated 19 th October 2025 that all directors were required to present themselves in person for verification, it is not in dispute that the Petitioner had already done so. The 1 st Respondent's refusal to complete her part caused the bank to halt

the process. The Petitioner's advocate's email of 1 st August 2025 captures the frustration when he stated: "We find your client's recent position both inconsistent and deliberately obstructive. If indeed she believed that both directors must physically sign... it is unclear why she proceeded to fill and sign the same forms and submit her personal documents in the first place." The evidence above demonstrates a clear and deliberate pattern of obstruction by the 1 st Respondent. She agreed, then backtracked; she insisted on physical presence, the Petitioner complied, and then she refused to complete her part while making baseless allegations while the Petitioner took every reasonable step to comply with the court order. I therefore find that the Petitioner is not in contempt. Conclusion and Disposition 20. In the upshot, I find that the Respondents' application dated 6 th November 2025 has no merit and the same is dismissed with costs. DATED SIGNED AND DELIVERED VIRTUALLY THIS 14 TH DAY OF SEPTEMBER, 2026 J W W MONGARE JUDGE In the presence of;

1. N/A for the Applicant
2. N/A for the Respondent
3. Abdisalan- Court Assistant

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Prepared on 29 October 2026 · Esheria