

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 197 OF 2017

NEO KENYA MPYA COMMUTERS LIMITED.....APPLICANT

VERSUS

JOY KENYA LIMITED.....1ST RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT.....2ND RESPONDENT

RULING

This suit was filed on 21st September, 2017 seeking the substantive order of an injunction against the defendants. The dispute involves some parking space in the central business district which was allegedly allocated to the plaintiff by the 2nd defendant. The 1st defendant is said to be a rival bus company which has allegedly been allocated the same parking space by the 2nd defendant.

The defendants denied the plaintiff's claim in the statements of defence filed herein. Alongside the plaint an application was filed for the same orders for a temporary injunction and the grounds set out on the face of the application. The application is under Sections 3A, 3B and 63e of the Civil Procedure Act and Order 40 rules 1 and 2 of the Civil Procedure Rules. The application is supported by an affidavit sworn by the Managing Director of the plaintiff. The application is opposed and replying affidavit sworn on behalf of the defendants.

From the material presented, the owners of the motor vehicles cited in the application are related. In fact they are said to be brothers. It is not therefore hard to dismiss the allegation that this is family rivalry that has been brought to the court.

The principles upon which an injunction may be granted are clear going by the case of **Giella vs. Cassman Brown & Company Limited (1973) 358**. The 2nd defendant holds the discretion to allocate parking space to any operator in the City of Nairobi. This is a matter that should have been subjected to alternative dispute resolution instead of involving the courts of law.

It is instructive that no interim orders were granted and it is over a year now, yet the plaintiff has not come to court to complain of any infringement of his right. It is clear in the first place there was no urgency and above all the injunction order sought was not based on any infringement as alleged in the application.

On the material presented, I see no merit whatsoever to grant the orders sought and therefore this application is dismissed with costs to the defendants.

Dated, signed and delivered at Nairobi this 23rd day of October, 2018

A. MBOGHOLI MSAGHA

JUDGE