



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 398 OF 2012

KENYA BROADCASTING CORPORATION.....PLAINTIFF/RESPONDENT

- V E R S U S -

CITY COUNCIL OF NAIROBI.....DEFENDANT/APPLICANT

RULING

1. This ruling is the outcome of the motion dated 18.2.2016 in which Kenya Broadcasting Corporation, the plaintiff/ applicant herein, is seeking for the following orders *inter alia*:

1. THAT this application be certified urgent and service be dispensed with.

2. THAT pending inter-partes hearing herein, an order do issue restraining and prohibiting the defendant/respondent whether by itself, its agents and/or servant and/or claiming under it from dealing in any manner whatsoever, including entering into and/or disposing of any interest and/or transferring and/or interfering with the plaintiff's occupation in LR no. 209/5918.

3. THAT pending the inter-pates hearing herein, the defendant/respondent by itself, servants and/or and its agents be compelled by way of an injunction to remove the bill boards and/or banners and/or any materials it erected and/or it caused to be placed on and/or at the precincts of LR no. 209/5918.

4. THAT costs of this application be provided for.

2. The motion is supported by the affidavit of Waithaka Waihenya. When served with the motion the City Council of Nairobi filed the replying affidavit of Robert Ayisi to resist the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions.

3. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have also considered the rival written submissions.

4. It is the submission of the plaintiff that this matter is pending a ruling for the application dated 23rd May 2014. It said that while the said ruling has been pending, the defendant on 16.2.2016 entered into the suit property namely L.R. No. 209/5918 and interfered with the plaintiff's broadcasting operations and erected thereon bill boards and or banners and or materials and thereby attaching it for the alleged outstanding rates. The plaintiff argued that the defendant's action has greatly injured and or interfered with the plaintiff's operations in the premises and if not restrained shall suffer irreparable loss and this suit and the intended appeal will be rendered nugatory.

5. The defendant has urged this court to dismiss the plaintiff's motion for lack of merit. It is the defendant's submission that it is entitled to recover rates arising out of the suit property. It is argued that the collection of rates is the function of County Governments like the defendant herein therefore the plaintiff being a rate payer should submit itself to the jurisdiction of the defendant for purposes of performing the constitutional duty of paying property rates. It is the submission of the plaintiff that the suit land belongs to the government of Kenya and that the services rendered by the plaintiff are fundamental, educational and free in nature on behalf of the national government and the defendant itself is a beneficiary of the services therefore any issue relating to rates should be taken up with the national government.

6. After a careful consideration of the rival arguments, it is clear in my mind that the question as to whether or not the plaintiff can be categorised as an ordinary rate payer or should be treated differently is an issue which may merit further interrogation in a substantive way during the substantive hearing of the suit. In the circumstances, I think the plaintiff is entitled to an interim protection awaiting the determination of the substantive suit. In short, I am satisfied that the plaintiff has established a prima facie case that warrants issuance of an injunction.

7. In the end, I find the motion dated 18.2.2016 to be meritorious.

It is allowed as prayed.

Dated, Signed and Delivered in open court this 27th day of January, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant