



**Cuniu Company Limited v Kajiado County Government (Environment and Land Case Civil Suit 32 of 2020) [2023] KEELC 22032 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22032 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE CIVIL SUIT 32 OF 2020  
MN GICHERU, J  
DECEMBER 5, 2023**

**BETWEEN**

**CUNIU COMPANY LIMITED ..... APPLICANT**

**AND**

**KAJIADO COUNTY GOVERNMENT ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 8/6/2020. The motion which is by the plaintiff is brought under article 40 of the [Constitution of Kenya](#), section 1A, 1B, 3A and 63 (c) and (e) of the [Civil Procedure Act](#), orders 40 rules 1 and 2, 51 [Civil Procedure Rules](#) and Section 18(2) of the [Land Act](#).  
The motion seeks a temporary injunction to issue restraining the respondent from trespassing, carrying out any development, disposing of or in any way dealing with LR Noonkopir township/469 pending the hearing and determination of this suit.
2. The motion is based on three grounds and is supported by an affidavit sworn by John Kamau Karemaigera who is the applicant's director. The affidavit has two annexures.  
The gist of the above material is that the applicant is the registered owner of the suit premises and that it has a lease dated 29/6/2016 valid for a period of 99 years from 1/8/2010. On 2/5/2020, the respondent's officials and the area member of County Assembly visited the suit land and announced that they intended to construct a public toilet and other public amenities on the suit premises. They went ahead to commission a contractor and to put some chalk markings on the frontage of the existing building which the plaintiff put up. The plaintiff is apprehensive that any such construction is contrary to its proprietary interests. It is for the above stated reasons that it now seeks the order of injunction.
3. The motion, though served on 21/9/2023 as per the affidavit of service of the same date, is not opposed. The respondent has not filed any reply to the motion.



4. I have carefully considered the motion in its entirety including the grounds, the affidavit and annexures. I find that the only issue to be determined is whether the motion meets the threshold set in the case of *Giella v Cassman Brown* (1973) EA 258.

The three prerequisites to the grant of an injunction are,

- a. Prima facie with a probability of success.
- b. Loss that cannot be adequately compensated with an award of damages.
- c. If the court is not of (a) and (b) above, it should look at the balance of convenience.

5. I find that the motion has merit for the following reasons.

Firstly, the plaintiff has established a prima facie case with a probability of success in that it has evidence of ownership of the suit land in form of the certificate of lease.

Secondly, if a public toilet were put up upon the plaintiff's land, it would occasion great loss. Not only would there be an unwelcome infrastructure on private land but it would also bring unwelcome strangers to private property.

Finally, the balance of the balance of convenience tilts in favour of the applicant. It is preferable that the public toilet be put up on public land or be not build at all rather than have it on the plaintiff's land.

6. For the above stated reasons, the motion dated 8/6/2020 is allowed. This suit to be prosecuted and concluded within one (1) year failing which this order will lapse under order 40 rule 6 [Civil Rules](#).

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5<sup>TH</sup> DAY OF DECEMBER 2023.**

**M.N. GICHERU**

**JUDGE**

