

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. 7 OF 2012

RACHEL NJOKI MWANGI.....PETITIONER/ APPLICANT

VERSUS

MUNICIPAL COUNCIL OF EMBU..... RESPONDENT

RULING

The Petitioner/Applicant filed a petition together with a Notice of Motion dated 5/10/2012 and filed on 9/10/2012. What is coming for Ruling is the Notice of Motion. In the said application brought under article 22 and 23 of the Constitution she sought the following orders;

1. *That the Respondent and or its agents and or servants be restrained from ejecting and or removing and barring the Petitioner from its market and or interfering with Petitioner's goods and or business pending the hearing and determination of this application.*
2. *That the Respondent and or its agents and or servants be restrained from ejecting and or removing and barring the Petitioner from its market and or interfering with Petitioner's goods and or business pending the hearing and determination of this suit.*

It is supported by the grounds on the face of the application plus her own supporting affidavit. In it she states that she is a trader in Kirinyaga and Embu and has a stall at Embu market. The Respondent vide a letter dated 28/9/2012 suspended her from the market. She therefore wanted the Respondent restrained from ejecting her from the said market. She was granted a temporary injunction for 14 days only. Those orders lapsed and no fresh orders have been issued.

I have perused this file and I was as much as the Respondent was granted time to file or trace their replying affidavit the same was not filed. Infact they have not even filed a replying affidavit to the main petition. That will be for another day.

My reading of the Petitioner's submissions gives me the impression that he has submitted on the main petition. Mr. Momanyi filed his submissions on the application dated 5/10/2012. Having not responded to the application the submissions by Mr. Momanyi may not be of much help. The Applicant's main complaint is that she was suspended without being given a hearing. This is a matter of evidence. The application was meant to ensure that her work at the market remained uninterrupted so that she could serve her customers and also pay fees for her children. Mr. Momanyi submits that the Respondent has no ill will against the Petitioner/Applicant. It has allowed her to operate the market without any restraint.

And that being the case the Court grants the orders sought restraining the Respondent from ejecting the Applicant from the Defendant's market. The Applicant should also utilize the opportunity granted very well. The Respondent is granted leave to file and serve a reply to the petition within 14 days. Thereafter directions may be taken. Costs in cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 29TH DAY OF JULY 2013

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Momanyi for Respondent

Njue – C/c