

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

E. L.C. CASE NO. 462 OF 2011

NAFTALI RUTHI KINYUA.....PLAINTIFF

VERSUS

PATRICK THUITA GACHURE..... 1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

RULING

Before me is the Plaintiff's Notice of Motion dated 21st May 2013 which seeks orders of temporary injunction restraining the 1st Defendant from trespassing on Land Reference Number 8285/1522 or Plot Number 133 Kariobangi Light Industries (the "Suit Property) pending the *inter-partes* hearing of this application and pending appeal.

It is based on the grounds that this court delivered a ruling on 17th May 2013 dismissing the Plaintiff's application dated 6th September 2011 and that being dissatisfied with that ruling, the Plaintiff has preferred an appeal and seeks the Suit Property preserved as the appeal is being heard and determined.

The application is also supported by the Supporting Affidavit of Naftali Ruthi Kinyua sworn on 21st May 2013.

The application is opposed through the Replying Affidavit of Patrick Thuita Gachure sworn on 5th June 2013 in which he stated that the application is disguised as an application for injunction pending appeal while in the real sense it amounts to an appeal through the back door which is an abuse of the process.

Indeed, this court did have an opportunity to consider whether or not to grant an interlocutory injunction in this case as sought by the Plaintiff in his Notice of Motion dated 5th September 2011. The court went to great length to explain the reasons why it declined to grant the interlocutory injunction. The present application is in many ways a reiteration of the dismissed application. The same principles set out in the said ruling are applicable in this suit. The facts being the same, this court finds that the application fails to meet the principles for the grant of an interlocutory injunction set out in the case *Giella vs. Cassman Brown (1973) EA 358*.

Accordingly, this application is hereby dismissed with costs to the Defendants.

SIGNED AND DELIVERED AT NAIROBI

ON THE 20TH DAY OF SEPTEMBER 2013.

MARY M. GITUMBI

JUDGE

