



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Civil Case 206 of 2010**

**LILY WAIRIMU NGUITHI ..... PLAINTIFF/RESPONDENT**

**VS.**

**CITY COUNCIL OF NAIROBI ..... DEFENDANT/RESPONDENT**

**AND**

**HENRY W. MAINA ..... 1<sup>ST</sup> INTERESTED PARTY**

**GRACE WANJIKU MAINA ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

**1.** The plaintiff/applicant herein referred to as the applicant has filed a Notice of Motion dated 4<sup>th</sup> April 2012 under section 1A 1B, 3 and 3A of the Civil Procedure Act, Order 40 Rule 6, Order 50 Rule 6 and Order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, seeking the following orders:-

- a) That leave be granted to the applicant to apply for the extension of orders granted by this Honourable Court on 14<sup>th</sup> July 2010 out of time.
- b) That this Honourable Court be pleased to extend the orders for interim injunction granted by this Honourable Court on 14<sup>th</sup> July 2010 until the hearing and final determination of this suit.
- c) That in alternative this Honourable Court be pleased to grant an order for status quo to be maintained pending the hearing and determination of this suit.
- d) That the cost of this application be provided for.

The application is based on the following grounds.

- a) That this Honourable Court order granted on 14/7/2010, has already lapsed.
- b) That the applicant has made attempt to have this matter heard and determined but the same has been unfruitful.
- c) That the matter was scheduled for hearing on 11<sup>th</sup> July 2011 and 18<sup>th</sup> January 2012 but the same was taken out of the cause list during the call over.
- d) That the City Council of Nairobi on 30<sup>th</sup> day of March 2012 demolished the applicant's gate without any notice.
- e) That the defendant has threatened to make an access road through the applicant's property L. R. No. Amoretti/Reroute 1697.
- f) That the said access road will interfere with the applicant's developments on the property L.R. No. Amoretti/Reroute 1697.
- g) That the applicant is the registered owner since year 1998 and no access road has ever been on the property.
- h) That the action by the defendant will prejudice the applicant right to own property and also interfere with the subject matter of this suit
- i) The applicant's actions show lack of regard for Court process as it seeks to steal a match on the plaintiff.

The application is supported by the affidavit of the plaintiff/applicant 4/3/12. The application was opposed by the respondent/defendant. Patrick Tom Odongo a Director of City planning department with the defendant filed a replying affidavit dated 25/4/2012

The background of his application is that the plaintiff/applicant was granted injunctive orders on the 11/7/10. The said order were to last one year. They lapsed on the 11/7/11. The suit was not set down for hearing as was ordered by the Court.

**2.** The applicant is apprehensive that the defendant is about to take action to make an access road through her plot to her detriment. She explains that on two occasions she has set down the suit for hearing on 11/7/2011 and 18/7/2012 but the matter was taken out of the cause list during the call-over. She states further that the defendant on 30/3/2012 demolished her gate without any notice and has threatened to make the access road which will interfere with her developments on the suit property.

**3.** The respondents in opposing the application accuse the applicant of the inordinate delay in bring the application as the orders granted were discharged over one and half years ago. That the application is defective and an abuse of the Court process and lacks merit and further that applicant has not given sufficient undertaking as required by law. That the applicant application dated 4/4/2012 has been taken by events since the construction of the road has already taken place, a fact the applicant disputes in her further affidavits dated 27/4/2012 where she deposes at paragraph 9 that no road has been constructed.

**4.** I have considered the oral submissions made together with the affidavits filed and annexures and to help me further I have read the ruling delivered on the 14/7/2010. The applicant has explained that the matter could not be heard as it was two occasions taken out of the cause list during the call over. She has exhibited a letter dated 12/1/2012 inviting the defendants to fix the matter for hearing. Her explanation that the matter was taken out of the cause list is plausible. The period of one and half years is long but in the interest of justice and since the suit is still pending it is in order that the status quo be preserved until the hearing of the suit. I note that that applicant claims there is no access road yet the respondent claims

one has been created. The Court has not established the position on the ground. In the interest of justice and to preserve the status quo before the matter is heard I will extend the interim orders granted on the 14/7/2010 for a period of one year from the date of this ruling. The applicant must endeavor to fix the suit for hearing within the one year. On the undertaking given the applicant has complied with the orders of the Court given on the 4/4/2012 which I find sufficient. Cost shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 5th Day of June 2012

**R. OUGO**  
**JUDGE**

In the Presence of:-

..... For the Applicant

..... For the Respondent

..... Court Clerk