

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC. 10 OF 2011

MALVI INVESTMENT LTD.....PLAINTIFF

V E R S U S

PETER WANJAU.....1ST DEFENDANT
KURIA MWANGI.....2ND DEFENDANT
IRUNGU KAMAU.....3RD DEFENDANT

R U L I N G

This application was not opposed. The Plaintiff has shown, by the production of title deed marked “MS1”, that it is the registered proprietor of L.R. No. 209/12824 Ngara road, Ngara area of Nairobi. It seeks to develop a mall on the premises and has obtained the relevant approvals (“MS2”) from the City Council of Nairobi, the National Environment Management Authority and the Water Resources Management Authority. In the sworn affidavit by its director Manoj Salva, it is stated that when it commenced putting up a hoarding fence on the suit property the Defendants pulled it down and destroyed it saying it has grabbed the property. The suit was brought to permanently restrain the Defendants from this interference and also for general damages for the trespass. The present application under Order 39 rules 1, 2 and 3 of the Civil Procedure Rules is for a temporary injunction pending the hearing and determination of the suit.

On basis of **Giella –Vs- Cassman Brown & Co. Ltd [1973] EA 358**, I find that basis has been laid for the grant of a temporary injunction. The registration gives the Plaintiff an absolute and indefeasible claim to the suit property. It is entitled to possess, occupy, use, develop and quietly enjoy the property. It is this right that the Defendants are interfering with and which interference the court has the duty to restrain.

The application is consequently allowed in terms of prayers 3, 4 and 5.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2011

A. O. MUCHELULE

J U D G E