



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC. 340 OF 2010**

**GRACE WAIRIMU**

**SORORA.....PLAINTIFF**

**Being the administration of the estate of Francis Sorora Oloiptip**

**(Deceased)**

**V E R S U S**

**CITY COUNCIL OF**

**NAIROBI.....DEFENDANT**

**R U L I N G**

There is no dispute that the suit property, that is L.R. No. 209/9749, belongs to the deceased Francis Sorora Oloiptip and that the Plaintiff is holder of a limited grant (“GWS1”) and thereby authorized to bring this suit on behalf of the Estate. On the suit land is operated Zam Zam Bar & Restaurant. On 9<sup>th</sup> July 2010 the Defendant served the Plaintiff with an Enforcement Notice under section 30 of the Physical Planning Act (Cap.286) asking her to remove illegal structures and to cease to occupy the same. The Notice was for 7 days and she was warned that if she did not comply the Defendant was going to demolish the structures. This is what forced her to file this suit for a permanent injunction. In the interim, she sought a temporary injunction under Order 39 rules 1, 2 and 9 of the Civil Procedure Rules.

In the plaint and in the supporting affidavit, the Plaintiff stated that they have constructed a temporary structure and sewer on the suit property and that this was done with the approval of the Defendant. The replying affidavit indicates that the Defendant did not approve the offending structures. No approval was produced by the Plaintiff. The structures would *prima facie* be illegal and therefore liable to demolition.

There is no evidence that the Plaintiff would suffer irreparable loss or injury which damages cannot adequately compensate, or which the Defendant would be unable to pay.

The balance of convenience should tilt in favour of the Defendant who is executing its mandate under the Physical Planning Act to demolish a structure in respect of which there is no approval.

On basis of **Giella –Vs- Cassman Brown & Co. Ltd [973] EA 358**, I dismiss the application with costs.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH 2011**

**A. O. MUCHELULE**

**J U D G E**