



**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**

On 14<sup>th</sup> March 2011 the court dismissed with costs the Plaintiff's application for a temporary injunction to restrain the Defendant, its agents and/or employees from enforcing the Enforcement Notice dated 9<sup>th</sup> July 2010 and/or demolishing the approved structures erected on the property known as L.R. 209/9749 situate along Joseph Kange' the Road in Nairobi. The property belongs to the deceased Francis Sorora Oloiptip whose estate the Plaintiff has letters to administer. The Defendant had issued the Notice asking that the structures thereon be demolished because they were illegal on basis that the construction had not been approved. In the application the Plaintiff had alleged they were approved but the Defendant had sworn that there was no approval. The court found that since the Plaintiff had not availed the approved plans, she had not demonstrated a *prima facie* case with a probability of success in terms of **Giella –Vs- Cassman Brown & Co. Ltd [1973] EA 358**.

The present application by the Plaintiff was brought under sections 1, 1A, 1B, 3, 3A, 63(c) and (e) of the Civil Procedure Act and Orders 40 rules 1, 2 and 4, 45 rules 1 and 2 and 51 rule 1 of the Civil Procedure Rules, 2010 and basically sought that the dismissal of the application above be reviewed and/or set aside and the temporary injunction be granted. The reason for the application was that the Plaintiff had since come by the approved plans ("GWS 3"). She explained that after the deceased's death on 27<sup>th</sup> November 2009 she had taken over the management of the property on which was erected ZAM ZAM Bar Restaurant. This is the Bar structure the Defendant sought to demolish. She operated the business until July 2010 when the Defendant came calling. They wanted approved plans. She checked but found only annual business permits the Defendant had been issuing to the deceased. It on basis of these permits that she swore that there were approved plans. Her thinking being that, there was no way the Defendant could licence the Bar if it was on un-approved structures. When her application was dismissed, however, she decided to go and check the deceased's rural home in Kajiado and in some drawer discovered the approved plans. This is when she made the present application.

The Plaintiff considers herself aggrieved by the order dismissing her application and seeks its review. Her argument is that she has discovered the approved plans/drawings which are material evidence which she had not produced after the exercise of due diligence. I accept that the application was dismissed because she had not exhibited the approval. The approval was therefore important and material evidence. She says, in effect, that she expected the approval to be where the other documents relating to the plot were. It was, however, not there. But there were annual business permits and she did not see how the Council would licence a business that had no approvals. The application was not opposed, although served. Her averments were therefore not controverted. I find that she had exercised due diligence.

The result is that her application is granted. The order dismissing her application is reviewed and set aside. With the production of the approved plans, I find that the Plaintiff has demonstrated a *prima facie* case with a probability of success. An injunction in terms of prayer (b) of the chamber application

filed on 14<sup>th</sup> July 2010 shall issue with costs.

**DATED AND DELIVERED AT NAIROBI  
THIS 24<sup>TH</sup> DAY OF MAY 2011**

**A. O. MUCHELULE  
J U D G E**