



REPUBLIC OF KENYA
IN THE COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 488 OF 2008

MUHUDIN HILLOWLE WAHILIYE.....APPELLANT

VERSUS

THOMAS OGUTTA ONGORI.....1ST RESPONDENT

CITY COUNCIL OF NAIROBI.....2ND RESPONDENT

(Being an appeal from the ruling and order of Hon. A. O. Muchelule Esq, the Chief Magistrate Milimani Commercial Courts Nairobi in CMCC No.2774 of 2008 delivered on 18 August, 2008)

RULING

(Review of Hon. Judges Orders)

I. BACKGROUND

1. This appeal file was heard and finalized by Sitati J. the Hon. Judge has since been transferred out of Nairobi. I deal with this matter under Order 18 Rule 8(1) Civil Procedure Rule (formerly Order 17 Rule 10 Civil Procedure Rule).
2. In brief, an appeal had been filed opposing orders of injunction that had been granted to the 1st respondent/original plaintiff in a land case where the appellant/original 1st defendant was undertaking construction on properties adjacent to each other. The said plots being LR. 233 Kimathi Estate Riverbank, LR. 234 Kimathi Estate Riverbank and LR 235 Kimathi Estate Riverbank. The trial court stopped the construction works by the said injunction.
3. The appeal court upheld the issuance of the injunction. In concluding the judgment (after which submission had been given to the Hon. Judge, the Hon. Judge dismissed the appeal. That the injunction was correctly issued but went further to impose the term that a sum of Kshs. 250,000 /= be issued as security in the event the 1st respondent/original plaintiff loses the Lower Court case.
4. The application dated 3 March 2011 was filed to review the said orders of depositing the said sum.

II. APPLICATION 3 MARCH 2010

5. The argument point forward by the appeal is that at no time was a prayer for security asked for by the original 1st defendant. The trial Magistrate never imposed the said condition. It was therefore an error to impose the condition or grounds that the sum of Kshs. 250,000/= was more than the value of the land.
6. This application was opposed. That the condition having not been met the injunction orders should lapse.

III. FINDINGS

7. It must be pointed out that orders of injunctions are given at the discretion of the court. The issue of security in the event the orders were unlawfully obtained (in this case in the event that the original plaintiff loses his case) is so given on discretion of the court.

8. What I would decline to remove the condition imposed by my sister. What comes across is that the appellant is not able to meet the condition of the security. I would vary this to state and order that where a cash deposit of Kshs. 250,000/= cannot be immediately raised, then a security bond from a reputable insurance company or a bank can be raised. I would vary this order to that extent for a period of 21 days from to-day's date.

9. The injunction would remain in force till the finalization of the Lower court case. Costs to the 1st respondent/appellant/1st defendant.

RULING DATED THIS 21ST DAY OF MAY 2011 AT NAIROBI

**M. A. ANG'AWA
JUDGE**

Advocate

i. appellant/original plaintiff.

J. Anyoka instructed by M/s Anyoka & Co. Advocates for the

ii. 1st respondent/Original Defendant

P. O Munгла instructed by M/s Munгла & Co. Advocates for the