



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 126 OF 2011**

**PETERSON KINYARI KARIUKI.....1<sup>ST</sup>**  
**PLAINTIFF/APPLICANT**

**JULIA WANGARI MWANGI.....2<sup>ND</sup>**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**MOLO TOWN COUNCIL.....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**KENYA RURAL ROADS AUTHORITY.....2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

By a Notice of Motion dated 6<sup>th</sup> June and filed on 7<sup>th</sup> June 2011, the Applicants sought temporary orders of injunction against the Respondents, pending the hearing of the application *inter partes*.

The Applicants were granted orders of temporary injunction on 7<sup>th</sup> June 2011, and the Motion was fixed for hearing *inter partes* on 21<sup>st</sup> June 2011. In the event it was heard on 17<sup>th</sup> July, 2011 when counsel for the respective parties argued for and against the motion.

The issue in contention is a plot of land comprising approximately 1/8 of an acre allotted by 1<sup>st</sup> Respondent to the Applicants by a letter dated 23<sup>rd</sup> July 2010, and on which the 1<sup>st</sup> Applicant paid all the necessary fees, amounting to Ksh 25,000/= as specified in the Letter of Allotment. The Applicant exhibited all the receipts for payment of those fees.

The Applicant appears to have moved with speed and sought approval of his development plan from both the Works Officer Molo Town Council, and the Provincial Coordinator/District Physical Planning Officer, Nakuru District, as well as the District Public Health Officer, Molo District.

With those approvals he constructed a stone building comprising -

- Six (6 No.) shops,
- Two (2) corridors,

- Five (5) single rooms with chimneys,
- One (1) Double-room with chimney plinth area of 2,715 sq. ft,
- Four (4) pit latrine compartments,
- Two (2) bulk room compartments - plinth area: 140 sq. ft

The entire building accommodation is valued at Sh 4,800,000/= comprising -

- Land                   Kshs   200,000/=
  - Building            Ksh   4,250,000/=
  - Site Works         Ksh   350,000/=
- Ksh   4,800,000/=

In a letter dated 24<sup>th</sup> May 2011, (*Ref. NKU RE/KUR/CAMP 001*), by the Regional Manager, Manager, Kenya Rural Roads Authority, addressed -

**To: The Private Developer,**

**Camp No. LR. 9756/3**

**MOLO**

The Regional Manager advised the nameless Private Developer, that the Molo Road Camp LR No. 9756/3 is situate on junction D316/D315 Kiambiriria and informing the private developer that the camp plus the permanent houses which were demolished belong to the Ministry of Roads.

In his Replying Affidavit sworn on 1<sup>st</sup> July 2011, and the Further Replying Affidavit sworn on 14<sup>th</sup> October 2011 Mr. Justin Malala Rapando maintained that the suit land belonged to the Ministry of Roads, that it was reserved for the Ministry in the 1940s (*without showing any authority to support that statement*). Mr. Rapando also contends that there is already a contract for the construction of road passing through the camp, and that that work was in progress, and that the contractor would sue the Authority if work were stopped.

This deponent also claimed that the allocation to the Applicants was unlawful (*but did not say why it was unlawful*). There was no Replying Affidavit from the Molo Town Council, the 1<sup>st</sup> Defendant. If it was unlawful, that would be a matter for determination at the hearing of the main suit, and not at this interlocutory stage.

The principles for granting temporary injunctions are explained in the case of **GIELLA VS. CASSMAN BROWN & CO. LTD [1973] E.A. 358**, (1) that the Applicant must establish a prima facie case with a probability of success, (2) that the Applicant will suffer irreparable loss and damage if the injunction is not granted, and (3) that if in doubt the court will decide on the balance of convenience.

On the first principle, I have no doubt in my mind that the applicants have established a prima facie case with a probability of success. They have demonstrated a letter of allotment from the 1<sup>st</sup> Defendant with conditions attached thereto. They have complied with those conditions. They have not only paid the necessary fees for the plot; but also secured necessary approvals, including Public Health Authority, and Works Officer, and Physical Planning Officer for the development of the suit land. The Applicants have erected a building with 6 shops with 2 corridors, 5 single rooms with chimneys and 1

double room with chimney together with associated sanitary facilities. The building is said to be 50 metres away from the tarmac. The entire development is valued at 4.8 million.

The Applicants would certainly suffer substantial and quantifiable loss if the injunction were not granted.

There is of course no doubt that the 2<sup>nd</sup> Defendant would compensate the Appellant if the development were to be destroyed, but would that happen when the 2<sup>nd</sup> Defendant is accusing the 1<sup>st</sup> Defendant of allocating the plot illegally? The balance of convenience would lie with the Applicant.

For those reasons, I would allow the Applicants Notice of Motion dated 6<sup>th</sup> June 2011 with costs in the cause.

**Dated, delivered and signed at Nakuru this 4<sup>th</sup> day of November, 2011**

**M. J. ANYARA EMUKULE**

**JUDGE**