



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Environmental & Land Case 481 of 2009**

**HAPPYLAND INN LIMITED.....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL.....DEFENDANT**

**RULING**

1. The application to which this ruling relates is the Chamber Summons dated 28/09/2009. The same was filed under Certificate of Urgency and is brought under Order XXXIX r 1, 2 and 3 of the Civil Procedure Rules, Sections 3A and 63(e) of the Civil Procedure Act and all other enabling provisions of the law. The Plaintiff/Applicant seeks ORDERS:-
  1. ***THAT*** this Honourable Court be pleased to certify this application as utmost urgent and the same be heard *ex parte* in the first instance owing to the urgency of the matter and the unique circumstances of the case.
  2. ***THAT*** an urgent temporary injunction be issued against the Defendant/ Respondent restraining the Defendant, its agents, servants, employees or whomever from demolishing, entering in any manner interfering with the Applicant's perimeter wall in Land Reference Number 4894/187 (original number 4894/96/3) pending the interparties hearing of this application. (*sic*)
  3. ***THAT*** a temporary injunction be issued against the Defendant/ Respondent, its employees or whomever from demolishing, destroying or in any manner whatsoever from interfering with the Applicant's possession of Land Reference Number 4894/187 (original number 4894/96/3) situated in Garden estate pending the hearing and determination of this application and the suit and/or until further orders of this Honourable Court.
  4. ***THAT*** the costs of this suit be provided for.
2. The application is premised on five (5) grounds on the face of it and on the supporting affidavit sworn by John Peter Kamau Ruhangi. The deponent describes himself as the Managing Director of the Plaintiff company. The dispute concerns a parcel of land known as LR No. 4894/187 (original number 4894/96/3) – the suit property – on which stands an eight (8) bedroomed residential house together with two (2) bedroomed residential servants quarters and an eight (8) foot high perimeter wall. The suit property allegedly belongs to the Plaintiff company and that the developments standing thereof were approved by the Defendant herein. The Plaintiff alleges that on or about 23/09/2009 at about 12.00 a.m. the Defendant hired goons who demolished part of the perimeter wall using a bulldozer. The deponent exhibited to his supporting affidavit an Indenture marked JPKRI dated 26/11/2001 between Ruhangi Agencies Limited and Happyland Inn Limited, approvals from the Defendant in respect of the perimeter wall marked JPKR 2 (note the documents themselves are not so marked) together with the Deed Plan No.

11189.

3. Together with the application, the Plaintiff filed a plaint dated 28/09/2009 in which it alleges malicious damage to its property and interference with the quiet enjoyment of the perimeter wall without any justifiable cause. The Plaintiff alleges that the Defendant's demolition of part of the perimeter wall of the suit property has exposed the Plaintiff to danger and has resulted in loss and damage to the Plaintiff. The Plaintiff prays for judgment against the Defendant for –

(a) *An urgent temporary injunction restraining the Defendant, its servants, agents and/or employees from in any manner demolishing, destroying, evicting or interfering with the Plaintiff's parcel of Land Reference Number 4894/187 (original number 4894/96/3 pending the final determination of this suit.*

(b) *A permanent mandatory injunction restraining the Defendant, its servants, agents and/or employees from in any manner whatsoever demolishing, destroying, evicting or interfering with the Plaintiff's said parcel of Land 4894/187 (original number 4894/96/3).*

(c) *Special damages*

(d) *General damages*

(e) *Costs of this suit*

(f) *Any other relief that this Honourable Court may deem fit and just to grant in the circumstances.*

4. The Plaintiff appeared in court on 28/09/2009 and was granted an interim order in terms of prayer 2 of the Chamber Summons. The interim order was to last for 14 days. The Chamber Summons application was fixed for interpartes hearing on 12/10/2009. The Plaintiff was also ordered to effect service upon the Defendant. Service was duly effected upon Karisa Itha, the Deputy Director, Legal of the Defendant on 2/10/2009 at 10.46 a.m. However, when the application came up for hearing on 12/10/2009, there was no appearance for the Defendant. Up to that time also, the Defendant had not filed any replying papers to the Plaintiff's application. Being satisfied that the Defendant had been duly served, I allowed the Plaintiff/Applicant to proceed with the application ex parte.

5. Learned counsel Mrs. Maina appeared on behalf of Mr. Kingori Kariuki for the Plaintiff/Applicant. Mrs. Maina submitted that in the absence of any replies to the Plaintiff's application and on the basis of the annexures to the Supporting Affidavit, the orders sought ought to be granted. Mrs. Maina also submitted that the Plaintiff was apprehensive that if the order sought is not granted, it is likely to suffer irreparable loss and damage.

6. The question that arises for determination is whether the Plaintiff has established a prima facie case with a probability of success. (see *Giella –vs- Cassman Brown & Co. Limited [1973] EA 358*). The Plaintiff in this case is a limited liability company as is clear from both the plaint and the annexures to the Supporting Affidavit. Mr. John Peter Kamau Ruhangi who has sworn both the Verifying Affidavit to the plaint and the Supporting Affidavit to the application says that he is the Managing Director of the Plaintiff company and therefore competent to swear the affidavits. It is however not clear who has given him the authority to swear the affidavits. Is it the Board of Directors, or the Shareholders? Mr. John Peter Kamau Ruhangi has not exhibited the authority from either of these bodies giving him the competence he alleges he has to either commence the suit or even swear the affidavit in support of the application.

7. The question of authority by a company to its officials/directors is fundamental to corporate management. A man cannot just wake up one day and decide to take action A without first of all seeking the authority of the company on whose behalf he purports to act. The courts have made it clear since the days of *Salomon & Co. Ltd. –vs- Salomon [1897] AC 22* that there is a clear distinction between the company as a legal entity and the human persons who run the company; and that every action taken on behalf of the company must be authorized in order to protect the company against the whims of directors and/or shareholders.

8. What is it I am saying here? Am saying that in the absence of authority from the Plaintiff company to Mr. John Peter Kamau Ruhangi to institute this suit (by way of a board or general meeting minute), then the Plaintiff's suit cannot be said to be a prima facie case with a probability of success. It is highly likely that the trial court may find the suit to be incompetent for lack of authority from the Plaintiff company to the Managing Director to institute the suit and to appoint advocates to act on its behalf (see *Milimani HCCC No. 324 of 2004 – Affordable Homes Africa Limited –vs- Ian Henderson & 2 Others*

and also Mombasa HCCC No. 116 of 2004 – Kabundu Holdings Ltd. –vs- Ali Ahmed t/a Skyclub Restaurant Ltd)

9. For the above reasons, I have reached the conclusion that the Plaintiff has not meet the conditions set out in the *Giella case* for granting of injunctions. In the result, the Plaintiff's application dated 28/09/2009 lacks merit and the same is dismissed but with no order as to costs. The interim order granted by this honourable court on the 28/09/2009 is hereby discharged.

Orders accordingly.

Delivered and Dated at Nairobi this 19<sup>th</sup> day of January, 2010.

**R.N. SITATI**  
**JUDGE**

Delivered in the presence of:-

No appearance for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

Weche – court clerk