



## **CIVIL PRACTICE AND PROCEDURE**

\* Principles of granting an injunction

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU  
CIVIL CASE NO. 23 OF 2010**

**KENYAMETHODISTUNIVERSITY ----- PLAINTIFF  
- VERSUS -  
PROF. MUTUMA MUGAMBI ----- DEFENDANT**

### **RULING**

The plaintiffs claim is for an injunction to restrain the defendant, his servants and his agent from restricting free access of the plaintiffs building to the plaintiffs council. The plaintiff also prayed for an order of eviction of the defendant. The defendant was an employee of the plaintiff but his employment was terminated by a full council of the plaintiff. That termination was communicated to the defendant on 17th February, 2010 according to the plaintiff. On that day, one of the council members on going to the plaintiffs' Meru campus at 7.00 a.m. met a contingent of armed police officers and an unknown security personnel. They refused entry to the council member of that campus. This was even though they were informed that he was a council member. They were even informed that he was the chancellor of the University. However the security officers refused him entry. It is due to those acts that this claim was filed. The plaintiff simultaneously filed a chamber summons dated 17th February, 2010. The chamber summons seeks the prayers, which are in the plaint that is for injunction. The plaintiff appeared before this court *ex parte* on 18th February, 2010. On that day the court granted an injunction as sought in prayer in no. 2 of that Chambers Summons and ordered the matter be heard *inter partes* on 8th March, 2010. It is unfortunately that the person who extracted the order erroneously indicated that the injunction was granted until the application was heard and determined. That extracted order was not correct to that extent. The parties appeared before me for hearing of the chamber summons *inter partes*. The defendant in the replying affidavit denied blocking access to the council members as alleged. The defendant stated that he was out of the country and had only returned on 17th February, 2010 at 2100 hours. He further deposed that the meeting convened where his termination was passed was constituted illegally and not in accordance of the plaintiffs charter. That claim was refuted by the plaintiffs further affidavit. The principles of granting an injunction are now well settled. In the case *GIELLA v CASSMAN BROAN & CO. LTD.* (1973) E.A. The court held

- “1. An applicant must show a *prima facie* case with probability of success;
2. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury;
3. When the court is in doubt, it will decide the application on the balance of convenience.”

The incidents that form the plaintiffs claim were at the time well publicized in the local media. The effect of any disturbance at the plaintiffs institution such as the one alleged by the plaintiff undoubtedly would affect not only the plaintiff and the defendant but also those who attend the plaintiffs institution of learning. It is for that reason that I find the plaintiff as shown a *prima facie* case with probability of success. The loss or injury that would be suffered if the restraining orders were not issued could not in my view be compensated by an award of damages. This is because the effect of disturbance would affect a large group of people. The plaintiff has shown that the orders sought are merited I there fore grant the following orders:

1. An order is hereby issued of injunction restraining the defendant, his agents, employee, his security agents or any other persons acting at his behest, directions and/or orders from barring, refusing entry or preventing the free user and access of the plaintiffs buildings, premises and offices to the university council members until this suit is heard and determined.

2. The plaintiffs are awarded costs of the chamber summons 17th February, 2010.

Dated at Meru this 22nd October, 2010.

MARY KASANGO

JUDGE