



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

Civil Case 266 of 2008

EAST AFRICAN STORAGE COMPANY LIMITED PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF MOMBASA 1ST DEFENDANT

JOEL TITUS MUSYA

T/A MAKURI ENTERPRISES AUCTIONEERS..... 2ND DEFENDANT

RULING

Before court is the Chamber Summons dated 2nd October 2008 by which the Applicant seeks inter alia the following orders:-

“2 THAT the 1st and 2nd Defendants by themselves, their servants, agents or employees be restrained from selling by public auction or by private treaty, transferring, leasing, charging, mortgaging, or in any other way or manner disposing of or dealing with all those pieces or parcels of land known as:-

(a) Mombasa/BlockI/388

(b) Mombasa/BlockI/390 and

(c) Sub-division Number 568, Section I Mainland North, Mombasa until the hearing and final determination of this suit or until further orders of this Honourable Court;”

The application was duly served on both the 1st and 2nd Defendants. Mr. Okongo appeared for the Applicant on the hearing date of 28/9/2009 whilst Mr. Ochwa appeared for the Municipal Council of Mombasa who are the 1st Defendants. The 2nd Defendants despite having been properly served did not appear in court to oppose the application.

The genesis of this dispute is the alleged non-payment of rates by the Applicants on the three parcels of land namely Mombasa/BlockI/388, Mombasa/BlockI/390 and Subdivision Number 568, Section I Mainland North, Mombasa (hereinafter jointly referred to as the “*suit premises*”). Mr. Okongo for the Applicant tells court in his oral submissions in support of this application that the 1st Defendant has issued to the Applicants a demand for rates totaling Kshs.21 million which sum is disputed by the

Applicants. The 1st Defendant has also persistently advertised the Applicants in the daily press as rate defaulters and finally through the 2nd Defendants who are auctioneers the 1st Defendant have caused the suit premises to be advertised for sale leading to the filing of this present application to stay such sale pending the hearing and determination of the main suit.

The Applicants are therefore seeking injunctive orders. The pre-conditions to the granting of such injunctive orders were clearly and succinctly laid out in the celebrated case of **Giella –vs- Cassman Brown**. I have carefully considered the submissions of counsel and I have also perused and considered the relevant provisions of Rating Act Cap 267. I am convinced that the Applicant has indeed made out a prima facie case. I am further convinced that taking into account the nature of business undertaken by the Applicants on the suit premises they do stand to suffer irreparable harm if the orders sought are not granted. The balance of convenience tilts in favour of the applicants. I therefore allow this present application in terms of prayer (2) thereof. Costs in the cause.

Dated and Delivered at Mombasa this 12th day of October 2009.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Omollo holding brief for Mr. Ochwa for 1st Defendant/Respondent

Mrs. Kawere holding brief for Mr. Okongo for Plaintiff/Applicant

M. ODERO

JUDGE

12.10.2009