



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 10 of 2007**

**DAVID NJOROGE WAMBIA ..... PLAINTIFF**

**VERSUS**

**LILIAN N. KIBUGU ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI WATER SEWARAGE CO. LTD. .... 2<sup>ND</sup> DEFENDANT**

**RULING**

**APPLICATION FOR INJUNCTION**

**DATED 9 JANUARY 2007**

1. The dispute that has arisen between David Njoroge Wambia the plaintiff/applicant herein and Lillian N. Kibugu the defendant1/respodennt herein concerns a “sewer line.”
2. The applicant is the alleged owner of Plot B-08 situated in Mathare North Nairobi. He was allocated this land by the City Council of Nairobi ( then the Nairobi City Commission) sometime in 1993. It is not disputed that he constructed a three storey building which he uses for education purposes and alleges he has 700 children. He constructed the sewer line of the said building to the main City Council sewer line which has a way leave. This way leave, according to the 1<sup>st</sup> defendant is illegal and passes through her land property Plot 2-299.
3. The defendant No.1 is alleged to have destroyed the sewerage line causing the plots to experience a land environmental concern.
4. The plaintiff sued the defendant 1 to restrain her from interfering with the sewer line. He also sued the 2<sup>nd</sup> defendant the newly formed water and sewerage company Ltd to restore his sewage.
5. The 1<sup>st</sup> defendant in reply stated the plaintiffs land was originally a play ground. His allocation was illegal and as such never provided for a school sewage.
6. It was further noted that the sewage was illegally constructed.
7. The 2<sup>nd</sup> defendant stated that both parties are in the wrong. Both have constructed illegal sewage lines respectively. The case herein concerns the plaintiff and the plans submitted did not have a sewerage

line number. He did not come to court with clean hands and prayed his application be duly dismissed.

## **II: Opinion**

8. The court notes the prayers sought by the plaintiffs amounts to a mandatory injunction against the 1<sup>st</sup> and 2<sup>nd</sup> defendant. Mandatory injunction in Kenya are not issued unless in special circumstances.

9. The question arises as to whether the plaintiff sewerage line was illegally constructed. The 1<sup>st</sup> and 2<sup>nd</sup> defendant state it was illegally so constructed. This issue requires to go for full trial. There is though no prima facie case made out with a probability of services.

10. This court declines to issue orders of mandatory injunction against the 1<sup>st</sup> and 2<sup>nd</sup> defendant. The application is hereby dismissed with costs to the 1 and 2 defendant.

DATED THIS 11<sup>TH</sup> DAY OF JUNE 2008 AT NAIROBI.

**M.A. ANG'AWA**

**JUDGE**

R. K. Macharia instructed by Macharia & Co. Advocates for the plaintiff

J.K. Mwangi instructed by J.K. Mwangi & Co. Advocates for the 1<sup>st</sup> defendant/Respondent – present

K. Mbugua instructed by K. Mbugua & Co. Advocates for the 2<sup>nd</sup> defendant/respondent - present