



**Rift Valley Railways Workers Union v Kenya National Highways Authority & 4 others;
 Raliways Staff Benefits Scheme & 2 others (Interested Parties) (Environment and Land
 Case Civil Suit E244 of 2020) [2022] KEELC 15517 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15517 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
 ENVIRONMENT AND LAND CASE CIVIL SUIT E244 OF 2020
 J OMANGE, J
 NOVEMBER 30, 2022**

BETWEEN

RIFT VALLEY RAILWAYS WORKERS UNION APPLICANT

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST RESPONDENT

MINISTRY OF TRANSPORT AND COMMUNICATION 2ND RESPONDENT

KENYA NATIONAL LANDS COMMISSION 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

AND

THE COUNTY GOVERNMENT OF NAIROBI INTENDED RESPONDENT

AND

RALIWAYS STAFF BENEFITS SCHEME INTERESTED PARTY

RETIREMENT BENEFITS AUTHORITY INTERESTED PARTY

KENYA RAILWAYS CORPORATION INTERESTED PARTY

RULING

1. The applicant filed a Notice of Motion application dated November 21, 2022 seeking for the following orders;
 - a. That the application be certified urgent and be heard ex parte in the first instance.



- b. That to allow for service and for inter-partes meeting, the process of commencing the test runs on the December 1, 2022 at the subject property by the intended 5th Respondent be and is hereby stayed pending the hearing and determination of the application.
 - c. That the application be placed before the trial court on the December 6, 2012 when it shall be coming up for directions.
 - d. That the intended 5th Respondent herein the County Government of Nairobi be and is hereby admitted in the matter as the 5th Respondent.
 - e. That costs be in the suit.
2. The application is premised on the grounds that there has been a change of guard at the County Government of Nairobi in which the suit property is situated. The applicant further avers that the administration of the County Government has made remarks that indicate that the county is about to commence test runs at the suit property which will be injurious to the interest of the members of the scheme whose livelihood has been disenfranchised by institutions and people with vested interests.
 3. The Applicant contends that the consistent change and shifting of state agencies from Kenya National Highway Authority, to Nairobi Metropolitan Services to Nairobi County Government without evidence of transfer of property is evidence that there is an intention to disenfranchise the true owners.
 4. The applicant argues that the test runs should be stayed so that the 5th Interested Party can explain to the court how it acquired the property. He argues that staying the test runs will enable the court to determine whether the process was legal.
 5. The matter came up for directions under Certificate of Urgency on November 22, 2022 on which date I directed that the Respondents be served and matter be heard on November 24, 2022. On this date counsel for Respondents sought for time to file a Replying Affidavit which I allowed and directed that matter be mentioned on November 28, 2022.
 6. On the November 28, 2022 I gave directions on the filing of submissions which have been complied with by as directed. In view of the urgency Ruling was listed for November 30, 2022. I commend all parties for meeting the strict timelines for the filing of submissions which I have duly considered.
 7. The Replying Affidavit by the Chief Officer of the intended 5th Interested Party avers that the Green Park Terminals was compulsorily acquired under Article 40 (3) of the Constitution and Section 107 of the Land Act. The process of public participation was invoked. He insists that the acquisition has never been challenged at any given time.
 8. He states that after consideration, the Ministry allocated the land to the Nairobi Metropolitan services for purposes of decongestion of the CBD. The construction of the Green Park Terminal then commenced with no challenge from any quarters.
 9. He ends by stating that it is evident the petitioners do not have a problem with the acquisition of land but are challenging the fact that they have not been compensated.
 10. The applicant Secretary General filed submissions in which he traced the history of the defendants who have had interest in the suit property ending with the latest Nairobi County Government the intended 5th Interested Party. He also referred the court to a senate report which had not previously been attached to his application and which therefore the Respondents had not had a chance to respond to.



11. He stated that although the applicants were not in possession of the suit property, it properly belonged to them and their rights would be prejudiced if the test runs went on. He argued that it was essential that a partial consent be filed in court before allowing the intended 5th Respondent to proceed with the test runs.
12. Submissions by counsel for the intended 5th Respondent were categorical that the principles in *Giella Vs Cassman Brown* had not been met.
13. In spite of the limited time that is available for me to deliver this Ruling, I have taken time to consider the affidavits that have been filed and the submissions that have been filed by both parties.
14. There is no serious contention on the prayer to enjoin the 5th Respondent who it is a matter of public knowledge has now taken over the operations of the Nairobi Metropolitan Services. It is in the interest of justice and proper determination of the issues herein that the 5th Respondent be enjoined to these proceedings.
15. On the second prayer which was crafted as stay of test runs to allow for service and an inter partes meeting, I am clear in my mind that though not stating as much the application seeks for an order for injunction.
16. The principles for grant of an injunction were set out in the celebrated case of *Giella Vs Cassman Brown*. These are the issues for consideration before me; Does the applicant have a prima facie case? Would the applicant suffer irreparable harm that cannot be compensated by way of damages? Lastly where does the balance of convenience lie?
17. The applicants have sought to stay the test runs as they claim that the property in question is a private property and allowing the test runs would violate their rights. There are a lot of unanswered questions such as what are the details of the property? Why was there delay in seeking this injunction when construction of the terminus commenced four years ago according to the unchallenged evidence of the intended 5th Respondent? I do not wish at this interlocutory stage to delve into the merits or otherwise of the case. However, in view of these unanswered questions the prima facie case has not been fully established.
18. On the limb of irreparable loss, it should be proved that the applicants would not be adequately compensated by way of damages. In a case of procedural compulsory acquisition, damages will definitely be adequate compensation. Indeed, it is for these reasons that stay is requested to allow for what is described as an inter- partes meeting. No doubt the meeting would agree on compensation.
19. In addition to these well settled principles the courts have now recognized that Order 1 A and B of the [*Civil Procedure Rules*](#) demands of the courts a responsibility to give effect to the overriding objectives which include; the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties. This calls upon the court to not only consider whether the well settled principles of injunction have been met, but to delve deeper to determine what the ends of justice would require in each circumstance.
20. Article 159 The [*Constitution*](#) of Kenya commands the court to promote Alternative forms of Dispute Resolution. Section 20 of the Environment and Land Court further provides a window for the court to promote amicable settlement of disputes. The courts and all public bodies should give effect to these constitutional and statutory edicts. It is clear that the applicants herein are seeking a discussion with the respondents. This courts finds that it is interests of justice to give them this opportunity by referring them to Court Annexed Mediation which the Judiciary has now fully embraced as a door for dispute



resolution. However, pursuit of this mode of dispute resolution should not interfere with programmes that are being implemented for the benefit of the public, which is what would happen if the court were to stop a programme so as to allow negotiations as sought by the applicant.

21. Taking into the account the foregoing I make the following orders;
22. The application is partially allowed in the following terms:-
 - a. The proposed 5th Interested Respondent, the County Government of Nairobi is admitted in the suit as a 5th Respondent.
 - b. The prayer for stay of the test runs is dismissed.
 - c. That the matter to be mentioned on December 6, 2022 for further directions on mediation or hearing.
 - d. That costs to be in the cause.

Dated, signed and delivered Via Microsoft Teams this 30th day of November 2022.

Judy Omenge

JUDGE

In the presence of: -

Mr. Munai for the Applicant

Mr. Okatch for the Respondent

Steve - Court Assistant

