



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Suit 1141 of 2005

BRUCE ONYANGO OKOYO T/A

GREEN STEPS INVESTMENTS 1ST PLAINTIFF

JECINTA WANZA MAKENZIE T/A SENTA

AUTO & CLEANER SERVICES..... 2ND PLAINTIFF

KAGILI TITUS KAHIRO 3RD PLAINTIFF

JOSEPH MURIITHI GICHERU 4TH PLAINTIFF

JAMES KIOGE KARUGA T/A QUICKER & CLEANERS SERVICES ...5TH PLAINTIFF

FREDRICK CHANZU 6TH PLAINTIFF

VERSUS

TOWN CLERK, CITY COUNCIL OF NAIROBI 1ST DEFENDANT

NAIROBI WATER COMPANY 2ND DEFENDANT

NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED 3RD DEFENDANT

RULING

In this application dated 19th September, 2005, and made under Order 39 Rules 1, 2, 2A, and 3 of the Civil Procedure Rules, the six named Plaintiffs seek the following main orders:

“1. ... 2. THAT the plaintiffs be allowed to continue operating their duly licensed businesses forthwith until the hearing and determination of this Application.

3. THAT the 2nd and 3rd defendants herein be compelled to reconnect and continue supplying the water services to the plaintiffs herein until the hearing and determination of this Application.

4. THAT a mandatory injunction do issue against the defendants both jointly and severally restraining them by themselves, their agents, servants, employees and or other person or entity whatsoever from tampering with and interfering with the business and property in any way whatsoever or at all or forcefully evicting the plaintiffs from their business premises until the hearing and determination of this suit”.

In the supporting affidavit sworn by the first plaintiff, on behalf of all the plaintiffs, the plaintiffs say that they are licensed by the 1st Defendant to carry on the activities of carpet cleaning, upholstery and cleaning services, auto washing and other professional and technical services, and that by its public notice dated 6th September, 2005, the third defendant has ordered their eviction from their respective “car wash bays” in disregard to the licenses they hold for the period ending 31st December, 2005.

However, before I go further, let me note that the annexures to the supporting affidavit show that only three of the six plaintiffs are indeed the licenses of the 1st Defendant, and therefore, entitled to bring this suit against the defendants. The other three, namely Kagili Titus Kahiro, Joseph Murithi Gicheru, and Fredrick Chanzu have not annexed their licenses and have no locus standie to institute these proceedings and accordingly their application is hereby dismissed with costs to the defendants.

With respect to the three “licensees” namely the 1st, 2nd and 5th Plaintiffs, I see nothing in their affidavit or the Plaint to constitute a cause of action against the 1st Defendant. There is nothing to show that the 1st Defendant has “cancelled” their licenses, or evicted them, and accordingly, their application against the 1st Defendant is dismissed with costs. As to their application for a mandatory injunction against the 2nd and or the 3rd Defendants, requiring those defendants to reconnect and continue the supply of water to them to enable them continue with their car wash businesses, they have not annexed any contract or agreement with these defendants for the supply to them of water for commercial use, and have, therefore, not made out a prima facie case with a probability of success.

The defendants, on the other hand, have shown that because of a shortage in the supply of fresh water, they are unable to supply water for non-essential commercial use, such as “car-washes”. They rely on the Water Act, 2003 which empowers them to regulate the supply and consumption of water within Nairobi.

The Applicants have not satisfied the conditions outlined in the case of *Giella vs Cassman Brown* (1978) E A 358 for the grant of an injunction, and have not satisfied this court that they have a prima facie case with a probability of success. In any event, if they are successful eventually damages are an adequate remedy.

This application is, therefore, dismissed with costs.

Dated and delivered at Nairobi this 2nd day of November, 2005.

ALNASHIR VISRAM

JUDGE