

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

HIGH COURT CIVIL CASE NO. 195 OF 2002

KENYA TAXI CAB ASSOCIATION.....PLAINTIFF

V E R S U S

THE HILTON HOTEL.....DEFENDANT

R U L I N G

The Plaintiffs in the main suit are members of a Taxi Cab Association operating in Nairobi. They came before this Court on 4th February, 2002 and sued the Hilton Hotel (the Hotel) complaining that their members had been stopped from operating taxi cabs along Watalii Street which fronts the Hotel. They blamed the Hotel for that action.

Contemporaneously with that suit they took out a Chamber Summons under Order 39 r. 1 & 2 of the Civil Procedure Rules seeking an injunction to restrain the Hotel from harassing or removing them from their operating base on that street.

The Applicants will succeed in their application if they establish that they have a prima facie case with a probability of success and secondly that they would suffer such loss as is incapable of recompose in damages if the application is not granted. If I am in doubt about those two tests I would decide the matter on a balance of convenience. Those are the principles set out in *GIELLA V. CASSMAN BROWN & CO. LTD* [1973] EA 358. The cause of action pleaded in the plaint is that the Hotel “wrote to the City Council of Nairobi on 30 th October, 2001 complaining of congestion and insecurity for Hotel guests upon which the plaintiffs were disallowed from picking up passengers along Watalii Street.”

It is not clear from that pleading whether it was the Hotel or the City Council of Nairobi (the Council) which disallowed the Plaintiffs from picking up passengers. The Council is not a party to these proceedings. It is also not clear whether writing to the Council and making complaints about the Hotels security perse is a cause of action. It is in the affidavit of support of the application that the Applicants attempt to connect the Hotel with their complaint. They say the Hotel

“decreed that the said Watalii Str eet is out of bounds for our members and having instigated the City Council of Nairobi to declare the same a No Parking Zone”

In support of that however, they exhibited some extract of minutes of the Council’s Works Committee meeting apparently held on 31st October, 2000, about one year before the letter complained of was written. It is not clear whether the extract is an authentic document as it is not certified and does not appear to be a resolution of the full Council. Be that as it may the Applicants rely on it to confirm that the City Council resolved to relocate the taxi ranks from the Hotel frontage to other streets nearby. Again the Council is not a party to these proceedings and it is not alleged that they made that resolution unlawfully. There is no evidence of any “decree” having been issued by the Hotel and the nature of the alleged instigation is not specified. The “ill motive”, “malice”, and “wanton disregard for nature justice” alleged against the Hotel were not particularized either in the plaint or the Affidavit in Support of the application.

The Applicants did not disclose that they had held a joint meeting between themselves, KENATCO and the Hotel in September, 2001 which meeting had been requested for by the Applicants themselves. It discussed matters of security and parking arrangements around the Hotel. Resolutions were made in that meeting and minutes were recorded which the Applicants themselves in a subsequent letter hailed as “a job well done” and vowed to “adhere to the recommendations put forward during this meeting”. The only reservation was the approval of the resolutions by the City Engineer. One of those resolutions was that there would be two parking lots in front of the hotel – one for Kenatco and the other for the Applicants.

It took the Hotels replying affidavit to make those disclosures and on that score, it seems to me, that the Applicants had come to court with unclean hands by withholding such vital information. I see no clear case with a probability of success on the pleadings and I need not, therefore, consider the issue of damages or balance of convenience.

The application is dismissed with costs.

DATED at NAIROBI this 27th day of February, 2002.

P.N. WAKI

JUDGE