

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CIVIL CASE NO. 216 OF 2002

BEATRICE MALESI.....PLAINTIFF

V E R S U S

THE CITY COUNCIL OF NAIROBI.....DEFENDANT

R U L I N G

The Chamber Summons dated 6th February, 2002 is not seriously opposed. It seeks a Temporary Prohibitory injunction to restrain the City Council of Nairobi (the Council) from threatening, evicting or in any manner interfering with the user of plot No. D-11 Umoja Inner Core Section I Nairobi (the premises), pending the hearing and determination of the suit. It also seeks a temporary mandatory injunction to force the council to return some 4 motor vehicles, Brake Linings and a silencer removed from the premises by Council officers. Section 63 (c), (e) Civil Procedure Act and Order 39 Rule 1 & 2 of the Civil Procedure Rules are invoked.

The facts upon which the application is based are not controverted. They are essentially that the Applicant was lawfully allotted the premises on 9th September, 1998 and paid to the Council all dues for it. She subsequently fenced the plot and commenced the business of a garage, repairing vehicles for reward. There is no averment that the business is not licenced by the Council. In September, 2001 however, the Council destroyed the fence and four months later in January, 2002 entered into the premises and removed the four vehicles and items complained of. All this happened in an effort to evict the Applicant and reallocate the premises to another person. The vehicles belong to other people as she was only a bailee and she is likely to suffer irreparable loss if the Council is not restrained from taking over the plot which is not like any other in the City.

As I said earlier all those averments are not denied anywhere in any defence, replying affidavit or grounds of objection. Learned Counsel for the Council Mr. Agima simply left the matters to the Court.

I think on the uncontroverted facts the Applicant has established a prima facie case with a probability of success and I am also persuaded that the loss of the plot would occasion irreparable loss. The plea for a prohibitory injunction is therefore, well founded and will issue forthwith. Although a higher standard of proof is required for an interlocutory mandatory injunction, I am in no doubt on the facts that it should properly issue in this case. The Applicant is merely a bailee of the items removed and they should be restored to the owners as no lawful cause has been shown to justify their retention. The application is granted.

The Applicant shall have the costs of the application.

DATED at NAIROBI this 7th day of March, 2002.

P.N. WAKI

JUDGE