



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
HIGH COURT CIVIL CASE NO. 951 OF 2001

**FRANCIS WAKAHIU THEURI.....PLAINTIFF**

**V E R S U S**

**RUIRU MUNICIPAL COUNCIL.....DEFENDANT**

**R U L I N G**

In this Chamber Summons application dated 11th June, 2001 and filed in this Court on the same day, the Plaintiff/Applicant seeks injunctive relief restraining the Defendant/Respondent from developing a public car park on a piece of Government land adjoining his business property known as Wendani Hotel within Ruiru Township pending the hearing and determination of the suit. His application is premised on the grounds that the proposed development is illegal and will block access to his hotel leading to irreparable loss and damage.

The said application brought under Order XXXIX Rules 1, 2 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act was heard inter partes on 21/6/2001. The point to be decided here is whether the Applicant has satisfied the requirements for a temporary injunction. The principles governing the granting of an interlocutory injunction were laid down in the case of **Giella v. Cassman Brown & Co. Ltd [1973] E.A. 358** as follows:-

“First an application must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide the application on a balance of convenience” – per Spry V.P. on page 360, letter E.

On the facts of the present suit, the Applicant has shown a prima facie case but its probability of success is highly doubtful. First, the Defendant has not at all allocated the parking area to a private developer. When the Defendant Council gave its approval to one Jemima Wacheke Kimani to develop the public car park, it was pursuant to the business woman’s request dated 11/3/1998 that the same be built and if the Council could not afford it, she would develop the same at her own cost. The Commissioner of Lands gave his consent by a letter dated 12th May, 2000 addressed to the Defendant Council and copied to other concerned authorities in Thika District.

That land has, therefore, not been allocated to anyone and is still awaiting the development of a public utility. Further, the proper person who ought to be sued in any case of this nature is the Commissioner of Lands in whom the administration of all government land is vested under the Government Lands Act (Cap. 280) by section 5 thereof. The Applicant’s case against the Council is not sustainable but I leave that aspect to the full hearing and trial.

On the second principle set out in **Giella v. Cassman Brown & Co. Ltd** (supra), the Applicant has not convinced this Court that the construction of the public car park will occasion irreparable harm to him.

He has not put in any evidence that there is no provision of access to and from his hotel. In the circumstances, this Court declines to exercise its discretion in favour of the Applicant and his application for an interlocutory injunction fails. The costs of the application shall be in the cause.

**DATED and DELIVERED at NAIROBI this 19th day of July, 2001.**

**ALNASHIR VISRAM**

**JUDGE.**