



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

**AT NAIROBI
MILIMANI LAW COURT**

CIVIL SUIT NO. 1390 OF 1998

**EMMA W. MURAI &
OTHERS.....
.....
.1ST PLAINTIFF**

**JACOB
OCHIENG.....
.....
.....2ND
PLAINTIFF**

**D.
RATEMO.....
.....
.....
3RD PLAINTIFF**

**F.S.
MUKOLA.....
.....
.....4TH
PLAINTIFF**

**F.
LUGONZO.....
.....
.....5T
H PLAINTIFF**

**L.
NJOROGE.....
.....
.....6TH
PLAINTIFF**

**Suing on behalf of
themselves and on
behalf of all Members
of JAMHURI**

**ESTATE RESIDENTS
WELFARE
SOCIETY.**

-VERSUS-

**NAIROBI CITY
COUNCIL.....
.....DE
FENDANT**

RULING

The applicants are the plaintiffs in HCCC No. 1390 of 1998 in which they have sued the City Council. The application seeks for an injunction to stop the City Council or its agents from going ahead with the allotment of the land in Jamhuri Estate which the plaintiff's term as 'public open space' and 'parking'. They are also asking that Defendants and the would be allottees be stopped from carrying on any development on these lands until the suit is heard and finalized. The applicants had obtained an order to act on a representative capacity on behalf of the other two hundred interested persons.

On 31.5.2000 when the matter came for hearing I directed that the applicants cause a notice to be put in one of the daily papers giving notice that this matter will be heard today. This I considered necessary to enable those interested in the matter be they allottees or other interested parties to make appearance or sent representatives.

I am informed by Mr. Murimi the counsel for the applicants that the notice was duly put in the E.A. Standard. The application is based on the facts contained in the affidavit sworn by Emma W. Murai.

In this affidavit the deponent says that the City Council has issued some allotment letters pertaining to the pieces of Lands designated for the public use when the Estate was built. The applicant's contention is that once plans for an estate are approved by the competent authority, which would include the approval, by the Minister in case of land under Local Authorities, such plans cannot be changed unilaterally.

I find merits in this argument. In this case the lands which are now being allocated were approved by the City Council as part of the estate. For such approval to be complete it must have been approved by the Minister for Local Government.

There is nothing filed to show that the plans for this estate had been legitimately varied since the approval of the plans. It is not sufficient for the Council to interfere with the plans simply because there appears to be some lands in the estate which are not build on because they are part of the plans. I am satisfied that the plaintiffs have a case with a probability of success. If the defendant is not stopped and documents of title are issued, it will create a situation, which would complicate the matter and course irreparable damage to the applicants.

The Defendant and the would be allottees stand to suffer no loss of the injunction is issued.

The application is allowed as prayed for in prayer © and (d) of the Chamber Summons of 9.11.99.

Delivered and dated this 12th day of July, 2000.

KASANGA MULWA

JUDGE