



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**E.L.C NO 16 OF 2012**

**RAMADHAN MAKOKHA NOOR.....PLAINTIFF**

**VERSUS**

**THE TOWN CLERK, MUNICIPAL COUNCIL OF NAKURU.....1<sup>ST</sup> DEFENDANT**

**JUMA KAHERO.....2<sup>ND</sup> DEFENDANT**

**RAJABU MURUMBA.....3<sup>RD</sup> DEFENDANT**

**MABRUKAH SALIM.....4<sup>TH</sup> DEFENDANT**

**ALI SHIBAN.....5<sup>TH</sup> DEFENDANT**

**MOHAMMED JUMA KING'ORI.....6<sup>TH</sup> DEFENDANT**

**ALI SALIM.....7<sup>TH</sup> DEFENDANT**

**SHERIFA WAMBUI RASHID (sued in their Capacity as officials of DOLPHIN YOUTH GROUP)..8<sup>TH</sup> DEFENDANT**

**RULING**

1.By Notice of Motion dated **12<sup>th</sup> October, 2012** the plaintiff, **Ramadhan Makokha Noor**, brought this application against the defendants seeking, among other orders; a temporary injunction to restrain the defendants/respondents by themselves, their servants and/or agents or any person acting on their behalf from putting up a water kiosk on Muranga road on the frontage to **Plot No. Nakuru Municipality Block 13/294** ("suit property") pending the hearing and determination of this suit.

2.The applicant relied on the grounds stated in his application as well as his supporting affidavit sworn on **12<sup>th</sup> October, 2012**; that he is the lawful owner and in occupation of the suit property; that the **2<sup>nd</sup>-8<sup>th</sup>** respondents (the Youth Group), had started construction on Muranga road, denying him access to his property despite his protests to the **1<sup>st</sup>** respondent; that whereas he did not oppose the Youth group's efforts to earn a decent living, he wished that they would do so without interfering with his constitutional right to property.

3. The application was not opposed. The **1<sup>st</sup>** respondent, **Wilson Maroa**, in a replying affidavit, sworn on **23<sup>rd</sup> October, 2012**, deponed that the **1<sup>st</sup>** respondent was aware of the **2<sup>nd</sup>-8<sup>th</sup>** respondents plan of putting

up the water kiosk and had in fact given them permission to put up a temporary structure to supply water to the residents of Bondeni area, under the Council's supervision; that what the Council did not authorise was the erection of a permanent structure as put up by the 2<sup>nd</sup>-8<sup>th</sup> respondents; that they did not involve the Council in their plans, a fact that led them to put up the structure on a road reserve not approved by the Council; that as a result of these actions by the youth, the Council had taken administrative action and halted the unauthorised construction after receiving numerous complaints from other stakeholders, including the plaintiff.

4. The 2<sup>nd</sup> to 8<sup>th</sup> respondents did not respond to the application despite being granted sufficient time to do so.

5. The plaintiff filed his written submissions on **14<sup>th</sup> January 2014**, dated **8<sup>th</sup> January 2014**. In their written submissions, Counsel for the plaintiff reiterated their position as contained in the application and supporting affidavit. They also relied on the 1<sup>st</sup> respondent's replying affidavit that the Youth group did not have authority to construct the water Kiosk on the location that they did.

6. The case of **Giella Vs Cassman Brown ( 1973) E.A 358**, lays down the principles for granting an interlocutory injunction relief. The court will consider whether:

1. The applicant has shown that he has a *prima facie* case with a probability of success.
2. Damages will be an adequate remedy and
3. On the balance of convenience, should the court be in doubt it will determine the matter on a balance of convenience.

7. To demonstrate that he has a *prima facie* case the plaintiff has exhibited various letters, including one by the 1<sup>st</sup> respondent to the Youth group authorising the project as long as they complied with the Council's regulations and the project did not interfere with other road users. The 2<sup>nd</sup> to 8<sup>th</sup> defendants went ahead and set up the water kiosk but they did not follow the guidelines given by the Council and erected the water kiosk in a different place from the authorized location.

From the foregoing, I am satisfied that the plaintiff has established a *prima facie* case with a probability of success.

8. For the above reasons, I order that pending the hearing and determination of this suit, the 2<sup>nd</sup> to 8<sup>th</sup> defendants are restrained by themselves, their servants and/or agents or any person acting on their behalf from putting up a water kiosk on Muranga road on the frontage to **Plot No Nakuru Municipality Block 13/294**. In the event that the water kiosk has already been erected on the unauthorised location, the structure to be pulled down within 14 days from the date hereof.

9. Costs of this application to be borne by the 2<sup>nd</sup> to 8<sup>th</sup> respondents.

**Dated, signed and delivered at Nakuru this 3<sup>rd</sup> day of October 2014.**

**L N WAITHAKA**

**JUDGE**

**PRESENT**

Ms Wambugu holding brief for Ms Wanjiru for the plaintiff/applicant

N/A for the defendants

Emmanuel Maelo : Court Assistant

**L N WAITHAKA**

**JUDGE**