



REPUBLIC OF KENYA

High Court at Meru

Civil Suit 115 of 2007

PETER MITHIKA MUJURI & 19 OTHERS.....PLAINTIFFS

VERSUS

MUNICIPAL COUNCIL OF MAUA.....DEFENDANT

R U L I N G

The plaintiff/applicants through an application dated 28th March, 2012 brought under Section 1A, 1B and 3A of the Civil Procedure Act and Order 40 Rule 13(1) and (2) and Order 51 Rule 1 of the Civil Procedure Rules are seeking that the defendant be restrained by an order of injunction by itself, its servants or agents from withholding to renew the plaintiff's trade licenses until this suit is heard and determined. The plaintiffs are further seeking that judgment be entered against the defendants in terms of Agreement between the parties and reached on 21st day of January, 2011 and signed by the parties on 17th February, 2011 without having to wait for full hearing of the suit.

The application is based on grounds on the face of the application and is supported by supportive affidavit and supplementary affidavit of Mr. Peter Mithika Munjuri dated 28.11.2012 and that of the co-plaintiffs/applicants. It is supported by annexures attached thereto. The application is opposed and the defendant filed replying affidavit dated 30th April, 2012 in opposition to the applicant's application.

The advocates agreed to file written submissions in support and opposition of the application. The firm of M/S Maitai Rimita & Co. filed their submissions on 6/6/2012 whereas the firm of M/s Kaberia Arimba & Co. Advocates filed theirs on 12th July, 2012. The court has carefully considered both submissions by counsel. It has also considered the pleadings by both parties in support and in opposition of the application and their opposing and supporting positions. It has also considered the affidavits in support of the respective sides.

In the instant application the applicants contend that they are owners of plots within Municipality of Maua and that there is dispute over valuation Roll which made them file this suit and as such the plaintiff's payment has been refused. That the defendant has refused to review the plaintiffs' licenses for the year 2012 unless the full payments of the rates are made and that plaintiffs' businesses were to be closed by 31st March, 2012 unless rates are paid in full. The applicants further averred that notice for payment of rates received in 2007 demanding rates backdated from 1991 is contrary to the provisions. The Valuations for Rating Act(Cap.266) in that the contents of the valuation roll had not been communicated to the applicants as required by law, and that no time for objection was given to the rate payers as per provisions of the said Act.

That the respondent/defendant is contended breached the law to the detriment of the applicants and only woke up 10 years later to harass the applicants. The applicants in their suit contend that the

defendant/respondent is not entitled to rates until it complies with the provisions of the law and is currently threatening to close the applicants' premises due to failure to have licenses.

The defendant/respondent on the other hand contended that both the application and the suit are challenging the contents of a purported 1996/1997 valuation roll, which valuation roll do not exist. That at time of filing the suit the defendant's valuation roll which was in place and in existence was the defendant's 1996 valuation Roll and the same was applied strictly in accordance with the law. It is contended the applicants herein have not paid rates in respect of their properties/premises since 1996 whereas other owners of ratable properties have been doing so within the defendant's jurisdiction. The defendant further contended that it has never refused to accept any payment from the applicants. The defendant denied having threatened to close the applicants' premises and averred that they have no powers to close business for non-payment of rates and/or annual trade licenses. The defendant further averred that the suit filed do not concern payment of trade licenses but payment of rates only and submitted that the application is misconceived and an abuse of court process.

The issue for determination in this application is whether the applicants have met the conditions for granting orders of injunction against the defendant restraining it from withholding to review the plaintiffs/applicants' Trade Licenses until this suit is heard and determined.

The principles on which this court can act in such cases are that the applicant must show a prima facie case with likelihood of success. Secondly that it should not grant an interlocutory injunction where damages are likely to be adequate compensation and thirdly, that if in doubt, the injunction should be granted on balance of convenience.

In the instant case the parties are not in an agreement as to whether the provision as set out under the Valuation for Rating Act(Cap.266) were fully observed or not. The Applicants contend the relevant sections of the said Act were not followed at all whereas the respondent say otherwise. That the issue of contention is not only in the application but also in the main suit. This court would not want to make a decision at this stage on that issue while full trial on that issue is pending and without full evidence from both sides. I cannot therefore say at this stage whether the applicants have established a prima facie case with probability of success. Further no evidence has been put forward to show that a case of refusing to grant injunction damages are likely to be adequate compensation.

In considering application for injunction I am of the view that we should look beyond the principles set down in the case of **GIELLA –V- CASSMAN BROWN AND CO.(1973) 353** which principles are:-

1. ***An applicant must show a prima facie case with probability of success.***
2. ***An injunction will not normally be granted unless applicant might otherwise suffer irreparable injury.***
3. ***When the cost the court is in doubt, it will decide the application on balance of convenience.***

Section 1A and 1B of the Civil Procedure Rules states as follows:-

1A (1) the overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

1B. (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—

(a) The just determination of the proceedings;

(b) The efficient disposal of the business of the Court;

(c) The efficient use of the available judicial and administrative resources;

(d) The timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and

(e) The use of suitable technology.

The overriding objective introduced through oxygen principle is to ensure justice to litigants and preservation of the subject matter pending final determination of the suit. In applying the principle set out in the case of **GIELLA-V- CASSMAN BROWN & CO. LTD**, one should be wary of not issuing orders that are in conflict with the oxygen principle, simply because oxygen principles obliges the courts to do substantive justice and avoid doing injustice by strictly following the test in Giella case.

In the interest of justice and having considered the nature of the application herein, and having found that the basis of the applicants' application is that the provisions of the relevant law was flouted, and the same having been denied by the defendant, I cannot at this stage say that the applicants have a prima facie case, with probability of success, I have not find there would be adequate compensation in case an injunction is refused. I am however of the view that by rejecting injunction at this stage would amount to injustice and would be contrary to oxygen principle, which obliges this court to do substantive justice.

I also find that injunction ought to be granted on balance of convenience. In the circumstances the application is allowed in the following terms:-

a. The defendant be and is hereby restrained by an order of injunction by itself, its servants or agents, from withholding to renew the plaintiffs Trading Licenses until the suit is heard and determined.

b. On prayer for judgment to be entered in terms of the alleged agreement between the parties same is rejected as premature.

c. Costs to be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF MARCH, 2013.

**J. A. MAKAU
JUDGE**

Delivered in open court in the presence of:

1. Mr. Rimita for plaintiffs/applicants

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2. Mr. M. Kariuki h/b for Kaberia Arimba for the defendant

**J. A. MAKAU
JUDGE**