



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 296 OF 2017**

**MATHEW NJOROGE KABETU.....1<sup>ST</sup> PLAINTIFF**

**CEDAR HOLDINGS LTD.....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**KENAY URBAN ROADS AUTHORITY.....DEFENDANT**

**RULING**

1. The first and second applicants are registered owners of **LR Nos.209/12224 and LR/209/8011/2** respectively which front Menegai Road in Upper Hill area Nairobi. The Respondent is in the process of expanding roads in Upper Hill area due to re-zoning of the area from residential to commercial. Menegai Road is one such road which is in the process of being expanded.

2. The Respondent held stakeholder meetings with the affected land owners who were duly informed of the extent of the portions they were to surrender for purposes of the road expansion. The applicants filed a Notice of Motion dated 2<sup>nd</sup> May 2017 in which they seek injunction orders restraining the Respondent from going ahead with the road construction by demolishing their perimeter fences.

3. The applicants contend that there has been no surrender of the portions to be taken by the respondent and that there has been no compensation following the valuation which was carried out. They further contend that they do not see the need for dualling Menengai Road when Hospital Hill Road which has more traffic has not been made a dual carriage road. They also contend that the Respondent is yet to iron out the diplomatic issues regarding World Bank whose land is also affected as well as other parcels of diplomatic missions adjoining the said road; that therefore if an injunction is not granted, the Respondent will go ahead to construct the road when their concerns have not been addressed .

4. The Respondent has opposed the applicants' application based on a Replying Affidavit sworn on 5<sup>th</sup> May 2017. The Respondent contends that the expansion of the roads in Upper Hill area was necessitated by the re-zoning of the area from a residential into a commercial area; that the applicants' application is premature as there are ongoing negotiations with the affected persons and entities and as regards properties which are held by diplomatic entities, the proper channels are being followed to address their concerns.

5. The Respondent further states that the applicants and other affected parties were involved and that all other processes which need to be undertaken will be carried out. The Respondent contends that the applicants have not met the threshold for grant of injunction and that their application should be

dismissed with costs.

6. This being an application for injunction, the applicants are expected to demonstrate that they have met the threshold set out in the case of **Giella Vs Cassman Brown Co.Ltd (1973) EA 358**. First an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless the applicant will suffer injury which will not be compensated in damages. Thirdly, if the Court is in doubt, it will decide the application on a balance of convenience.

7. From what the applicants are raising in their supporting affidavit, it is clear that in principle they are not opposed to the surrender of portions which are required for the road expansion. Their concern is that some of their concerns have not been addressed. I have looked at the applicants' claim which seeks a permanent injunction against the Respondent. The Respondent has stated that it was in the process of addressing the concerns of those affected. In fact it states that one of the parcels that is **LR No. 209/12224** which belongs to the first applicant is not among the parcels affected. I therefore do not see what prima facie case the applicants have to warrant issuance of injunction.

8. The applicants seem to be raising issues which do not concern them like the World Bank Land and other plots belonging to diplomatic missions. The applicants are even questioning why the road is being upgraded. This shows that they are not serious in what they are seeking. They are not denying that Upper Hill area has been re-zoned and the re-zoning requires facilities such as roads to be expanded to meet the new status.

9. Even on consideration of the second principle in the Giella Case (Supra), the applicants if affected will be compensated and in that case no injunction can be granted. The public interests far outweigh the private interests of the applicants. I find that the applicants have not demonstrated any prima facie case and that they can be adequately compensated. I therefore find no merit in the application which is hereby dismissed with costs to the Respondent. The injunctive orders given on 11<sup>th</sup> May 2017, and subsequently extended are hereby discharged.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 20<sup>th</sup> day of February 2018.**

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of date and time of delivery of Ruling.

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**