



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

**AT MILIMANI**

**ELC CASE NO. 1391 OF 2016**

**HARAMBEE CHILDREN THERAPY CENTRE**

**KINDERHILFSPROJEKTE.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**KENYA RAILWAYS CORPORATION.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE HON.ATTORNEY GENERAL .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING.**

1. The Plaintiff/Applicant brought a notice of motion dated 14<sup>th</sup> October 2016, in which it seeks injunctive orders against the respondents. The applicant contends that it purchased a parcel of land known as plot No.107-Dandora Phase II extension within Dandora in Nairobi from one Elizabeth Wambui Njoroge who had been allocated the same by Nairobi City County. The applicant runs a Children Therapy Centre on the plot which I shall hereinafter refer to as “*the suit land*”.
2. On 29<sup>th</sup> September 2016, the first Respondent moved on to the property with a bulldozer and threatened to demolish the structures on the suitland. The first respondent later on issued a notice to the applicant on 4<sup>th</sup> October 2016 requiring it to vacate the suitland which is a railway reserve within 7 days. The applicant contends that if the first respondent is not restrained from carrying out the intended demolition, the 45 disabled children who get therapy services at the centre on the suit property will suffer as they are from slums and cannot afford to go to hospitals.
3. The second respondent indicated through its counsel on 23<sup>rd</sup> November 2016 that it did not intend to file any response to the applicant’s application. The first respondent on its part opposed the applicants application through grounds of opposition filed in court on 22<sup>nd</sup> March 2017. The first respondent contends that the applicant is in illegal occupation of a railway reserve. That the applicant does not have certificate of title to the suit land and that the suit land has no deed plan and as such, no injunction can be given as the applicant has no prima facie case.
4. The parties herein agreed to dispose of the application by way of written submissions. The applicant filed its submissions on 13<sup>th</sup> April 2017. The first respondent filed its submissions on 31<sup>st</sup> May 2017. I have considered the applicant’s application as well as the opposition to the same by the first respondent. I have also considered the submissions filed. The only issue which emerges for determination is whether the applicant has demonstrated that it has a case to warrant issuance of injunctive orders.

5. The principles for grant of injunctions were set out in the case of **Giella Vs Cassman Brown Co.Ltd (1973) EA 358**. Firstly an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be issued 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.

6. In the instant case, the applicant contends that it purchased the suitland on 25<sup>th</sup> January 2016 from one Elizabeth Wambui 3 Njoroge. The applicant further contends that the suitland had been allotted to the vendor by Nairobi City Council, the predecessor of Nairobi City County. The applicant has annexed an undated transfer from Nairobi City County. Also annexed to the applicant's application is a receipt for payment of Kshs.27780/=dated 1<sup>st</sup> February 2016 in the name of Elizabeth Wambui Njoroge. Other than these documents, there is no evidence that the suitland had been allotted to the said Elizabeth Wambui Njoroge. There is an allegation which allegation has not been disputed that the suitland is a railway reserve. The applicant had been given notice to vacate the same. If it be true that the suit land is a railway reserve, then the same was not available for allocation to any person or entity. In the circumstances, I do not see any prima facie case which the applicant has. The applicant seems to suggest that it should not be evicted from the suitland as the same is used as a therapy centre for disable children from slums. In as much as the applicant may be doing a noble thing in helping the less fortunate in society, that cannot extend any sympathy to the applicant and cannot amount to irreparable loss. The applicant can continue to carry out its charitable activities from a properly acquired parcel of land. I therefore do find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this 25<sup>th</sup> day of **September, 2017**.

**E.O.OBAGA**

**JUDGE**

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

Court Assistant: Kevin

**E.O.OBAGA**

**JUDGE**