

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(CORAM: TUNOI, OWUOR & KEIWUA, JJ.A)
CIVIL APPLICATION NO. NAI. 70 OF 2001 (UR. 43/2001)
BETWEEN

SAMUEL KIMUGE & 40 OTHERS
AS PER THE ANNEXED LIST APPLICANTS
AND
MUNICIPAL COUNCIL OF NAKURU RESPONDENT

(An application for injunction pending the hearing and
determination of an appeal against the ruling of the
High Court of Kenya at Nakuru (Mr. Justice Rimita)
dated 11th October, 2000

in
H.C.C.C. NO. 152 OF 2000)

RULING OF THE COURT

This is an application brought under rule 5 (2) (b) of the Rules of this Court. The applicants, original plaintiffs in H.C.C.C No. 152 of 2000 consist of forty one (41) individual butchers or livestock suppliers in Nakuru Town, while some of them are also members of Rift Valley Meat Suppliers Co-op. Society, the 41st plaintiff. The order they seek is for the Court to restrain the respondent, Municipal Council of Nakuru, its employees, agents, servants and or any other person purporting to be acting on its behalf from surveying or further allocating Nakuru/Municipality Block 15, the suit property, measuring about 4-6 acres pending the hearing and determination of an appeal they have already lodged (Appeal No. 14 of 2001) against the ruling of Rimita J. delivered on 11th October, 2000. In that ruling the learned Judge declined to grant an injunction and thereby opened the way for the respondent to proceed with the sub-division and alienation of the land upon which the slaughter house stands with a view to allocating the property to private purchasers or developers.

The grounds upon which the order in the application is sought being that, the suit property is a public utility upon which stands a modern slaughter-house with all the necessary facilities for public use, an overall shop for the storage and sale of 'Matumbo' and an enclosure for keeping livestock awaiting slaughter. The suit property is registered in the name of the respondent as a trustee of the applicants and the public. Further, that the 41st plaintiff has leased the suit property from the respondent and the lease does not expire till the year 2004. In this regard the respondent has no capacity to allocate to private developers the suit property to the detriment of the applicants and the public.

Such an action on the part of the respondent would reduce the applicants' businesses and income of pastoral communities in the Rift Valley Province and its environs. Moreso, since this is the only public slaughter-house in the absence of the now defunct Kenya Meat Commission. This would no doubt cause the applicants irreparable loss not capable of being compensated for in damages.

While it would appear prima facie that the respondent can do what it likes with the suit property which it holds title to, we are of the view, and taking into consideration some of the substantial issues that have been raised in the grounds of appeal and which we are convinced that they are arguable, we are satisfied that this is a proper case in which we should exercise our discretion in favour of the applicant and grant the order sought. Moreso, when counsel for the respondent has clearly submitted that the respondent has no intention at the moment to interfere with the slaughter house and the land around it measuring about 4 acres. In that regard we shall grant the order sought. The respondent is hereby restrained from dealing with the suit premises measuring about 4 acres and the slaughter house till the appeal already filed is disposed off. The costs of this application shall be in the intended appeal.

Dated and delivered at Nakuru this 28th day of September, 2001.

P.K.

TUNOI

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JUDGE OF APPEAL

E.

OWUOR

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JUDGE OF APPEAL

M.

Ole

KEIWUA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR