

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

FILED
JAN 6 1989

W. J. ...
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

3 MIKEL MANUEL,)
4 Plaintiff,)
5 v.) C88-5173-CAL
6 CITY OF EAST PALO ALTO,) ORDER DENYING
7 et al.,) PLAINTIFF'S MOTION
8 Defendants.) FOR TEMPORARY
9) RESTRAINING ORDER

10 The Court heard plaintiff's Motion for a Temporary
11 Restraining Order on December 30, 1988. Plaintiff Mikel
12 Manuel appeared pro se. Appearing on behalf of defendant
13 City of East Palo Alto was East Palo Alto City Attorney
14 Reggie Crowell.

15 On December 29, 1988, plaintiff filed a Motion and
16 Petition for Temporary Restraining Order ("TRO") seeking
17 preliminary injunctive relief to prevent the City of East
18 Palo Alto from demolishing property commonly known as the
19 "Nairobi Village" shopping center located in East Palo Alto,
20 California. Plaintiff contends that the issuance of
21 preliminary injunctive relief is necessary to prevent the
22 taking of property without due process of law and to grant
23 him equal protection of the law as provided in the Fourteenth
24 Amendment to the United States Constitution. Plaintiff also
25 alleges that his civil rights under California law will be
26 violated if defendant proceeds with the demolition of Nairobi
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1 Village.

2 At the December 30th hearing, both parties produced
3 evidence regarding the condition of Nairobi Village and the
4 procedure defendant followed in declaring the property a
5 public nuisance and ordering that it be destroyed. Plaintiff
6 presented the testimony of the manager and several employees
7 of Eastside Liquors, the sole existing business within
8 Nairobi Village, and of a longtime resident of the East Palo
9 Alto community. Defendant presented the testimony of East
10 Palo Alto City and San Mateo County officials who had
11 knowledge of the condition of Nairobi Village and recently
12 toured the property for the purpose of determining whether
13 the site should be declared a public nuisance.

14 The evidence offered by the parties provides the Court
15 with the necessary factual background to rule on plaintiff's
16 Motion. The Nairobi Village shopping center consists of one
17 operating business, Eastside Liquors,¹ a number of vacant
18 buildings in various stages of decay and a large parking lot
19 situated adjacent to the buildings. The property is located
20 near a residential area of East Palo Alto. The testimony
21 presented by city building officials and engineers
22 conclusively demonstrates that the vacant buildings can not
23 be used for commercial purposes without extensive and costly
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25 ¹ Eastside Liquors is currently operating without the
26 proper business permits from the City of East Palo
27 Alto.

1 renovations being performed. The evidence also raises the
2 possibility that the cost of such renovations could exceed
3 the cost of razing the existing structures and constructing
4 new buildings on plaintiff's property.

5 The vacant buildings are presently being used as living
6 quarters by unknown persons and are the site of numerous
7 illegal activities. These activities include the sale and
8 consumption of illegal drugs and violent assaults. The
9 vacant shopping center presents a burden to East Palo Alto
10 and San Mateo County police and fire services as these
11 agencies are constantly responding to emergency calls
12 stemming from incidents at Nairobi Village.

13 The City of East Palo Alto declared Nairobi Village a
14 public nuisance pursuant to East Palo Alto City Ordinance 16-
15 83, following a hearing held by the East Palo Alto City
16 Council on December 19, 1988. Plaintiff was provided with
17 notice of this hearing by service upon the manager and
18 employees of Eastside Liquors. The East Palo Alto City
19 Council also attempted to serve plaintiff by sending notice
20 of the hearing to plaintiff's last available address and
21 posting notices outside Eastside Liquors. Plaintiff was
22 present at the City Council hearing and presented arguments
23 against the proposed destruction of his property.

24 Notwithstanding plaintiff's objections, the East Palo Alto
25 City Council declared Nairobi Village a public nuisance and
26 ordered plaintiff to raze the buildings by December 29, 1988,

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or the City would subsequently demolish the structures.

I.

Under Rule 65(b) of the Federal Rules of Civil Procedure, a court may issue a temporary restraining order only when special circumstances exist requiring that such extreme judicial action be taken. A court must consider four factors before determining whether the issuance of preliminary injunctive relief is appropriate: (1) whether there is a strong probability of success on the merits; (2) whether irreparable harm will be suffered by plaintiff if interim relief is not granted; (3) does plaintiff have an adequate remedy at law; and (4) whether the public interest will be disserved by the granting of temporary injunctive relief.

Regents of Universty of California v. American Broadcasting Co., Inc., 747 F.2d 511 (9th Cir. 1984); Los Angeles Memorial Coliseum Commission v. National Football League, 634 F.2d 1197 (9th Cir. 1980). "[T]he moving party may meet its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its favor. These are not separate tests, but the outer reaches 'of a single continuum.'" Los Angeles Memorial Coliseum Commission, 747 F.2d at 1201 (citing Benda v. Grand Lodge of International Association of Machinists, 584 F.2d 308 (9th Cir. 1978),

1 cert. dismissed, 441 U.S. 937 (1979)).

2 After reviewing the evidence and arguments submitted by
3 both parties in this action, the Court finds that plaintiff
4 has failed to make the showing required for the issuance of
5 preliminary injunctive relief.

6 1. Probability of Success on the Merits.

7 Plaintiff failed to convince the Court that there is a
8 likelihood that he will prevail on the merits of this action.
9 It is not clear from the evidence submitted that plaintiff
10 will be able to prove that defendant's actions are in
11 violation of Manuel's rights under either the Fourteenth
12 Amendment or California civil rights statutes.

13 The testimony at the hearing suggests that plaintiff was
14 provided with notice of the East Palo Alto City Council
15 meeting at which his property was determined to be a nuisance
16 and was given an opportunity to present his arguments at that
17 meeting. There is not a strong likelihood that plaintiff
18 will be able to prove that defendant failed to follow proper
19 due process procedures before declaring Nairobi Village a
20 public nuisance.

21 In addition, the testimony did not indicate that
22 plaintiff will probably be able to show at a trial on the
23 merits that his property has been unfairly singled out as a
24 public nuisance, thereby denying plaintiff equal protection
25 under the law. The testimony presented to the Court
26 indicates that problem sites in East Palo Alto other than
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1 Nairobi Village have been declared to be public nuisances by
2 the City Council. The evidence suggests that the city
3 officials of East Palo Alto are attempting in good faith to
4 improve all such unhealthy areas of their city.

5 2. Irreparable Harm.

6 When considering this prong of the test, "[t]he key word
7 in this consideration is irreparable. Mere injuries, however
8 substantial, in terms of money, time and energy necessarily
9 expended in the absence of a stay are not enough." Sampson
10 v. Murray, 415 U.S. 61, 90 (1974) (citation omitted) (emphasis
11 in original).

12 Plaintiff has failed to show that he will suffer
13 irreparable harm if preliminary injunctive relief is not
14 granted and defendant is allowed to demolish plaintiff's
15 property. The buildings in their current condition cannot be
16 used for any viable commercial purpose. In order to become
17 useable, the buildings would have to undergo extensive and
18 costly renovations. The only operating business in the
19 Nairobi Village is Eastside Liquors which is operating
20 without a business permit from the City of East Palo Alto.
21 Because the current structures are neither inherently unique
22 or useful, plaintiff does not have a substantial interest in
23 the current structures such that plaintiff will suffer
24 irreparable harm if a TRO is not issued. Accordingly,
25 plaintiff will not suffer irreparable harm if injunctive
26 relief is not provided.

1 3) Adequate Remedy at Law.

2 If plaintiff prevails on the merits in this action, he
3 may be entitled to compensation for any damages suffered.
4 But as previously discussed, failure to prevent the
5 destruction of plaintiff's property will not create the
6 potential for plaintiff to suffer damages that cannot be
7 adequately compensated by monetary relief.

8 4) Public Interest.

9 This case is a prime example of a situation in which the
10 public interest will be disserved if plaintiff is provided
11 with preliminary injunctive relief. The testimony presented
12 to the Court clearly establishes that Nairobi Village
13 presents a serious health and crime hazard to the citizens of
14 East Palo Alto. Any delay in the elimination of this hazard
15 is of great disservice to the health and welfare of those
16 citizens.

17 II.

18 Therefore, plaintiff's Motion for a Temporary Restraining
19 Order is hereby DENIED.

20 IT IS SO ORDERED.

21 DATED: January 3 , 1989.

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24 D. Lowell Jensen
25 United States District Judge
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