



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC. CASE NO. E003 OF 2021**

**IMPACT CHEMICALS LIMITED.....PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF KISUMU.....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KISUMU.....2<sup>ND</sup> DEFENDANT**

**KENYA COMMERCIAL BANK LIMITED.....3<sup>RD</sup> DEFENDANT**

**RULING**

Impact Chemicals Ltd, (hereinafter referred to as the plaintiff/applicant) have come to court against County Government of Kisumu, Land Registrar, Kisumu and Kenya Commercial Bank Limited (hereinafter referred to as Defendants/Respondents) and Interested Party respectively vide application dated 10<sup>th</sup> February 2022 and filed on the same date for orders that this Honorable Court be pleased to grant an order directing the officer in charge Kisumu Central police station to superintend the enforcement of the order of injunction given herein on the 3<sup>rd</sup> September 2021 and issued by this honorable court on the 9<sup>th</sup> September, 2021 for compliance.

The Plaintiff undertakes to meet the costs of the security apparatus provided for purposes of implementation of the order issued on the 9<sup>th</sup> September, 2021. Cost of this application be in the cause.

The application is made on grounds discerned from the supporting affidavit of Adams Omondi Kisoka that the applicant is the lawful registered proprietor of the suit property as lessees of the Government of the Republic of Kenya for a term of nine years from the first day January/October, 1998 in all those two parcels of land known as KISUMU MUNICIPALITY/BLOCK 13/107 & KISUMU MUNICIPALITY/BLOCK 13/109 respectively (“the suit properties”).

The plaintiff filed an application dated 29<sup>th</sup> January 2021 seeking for order of injunctions restraining the respondents either by themselves, their agents, representatives, employees or any other trespasser or persons claiming under them or under similar claim from entering upon, trespassing, alienating, encumbering, developing and/or in any other manner dealing with all that property known as KISUMU MUNICIPALITY/BLOCK 13/107 & KISUMU MUNICIPALITY/BLOCK 13/109 respectively (“the suit properties certificates”).

On the 3<sup>rd</sup> September, 2021 Hon. Justice A.O. Ombwayo granted an order of injunction restraining the 1<sup>st</sup> defendant by itself, its agent, servants, employees, and/or any person claiming any right whatsoever under it from entering upon, remaining thereon, removing from wasting, subdividing, digging on, excavating, fencing, erecting any building or developing any structure whatsoever or otherwise dealing with the property known as KISUMU MUNICIPALITY/BLOCK 13/107 & KISUMU MUNICIPALITY/BLOCK 13/109 respectively and/or in any way whatsoever interfering with the plaintiff’s quiet possessions and enjoyment of the same.

Despite service of the court order and appearance of the defendants advocates in the case, 1<sup>st</sup> defendants agents, Representatives, employees are continuing with their act disobedience of the said curt order by commencing construction of the County Assembly building on that property known as KISUMU MUNICIPALITY/BLOCK 13/107 & KISUMU MUNICIPALITY/BLOCK 13/109 respectively (“the suit properties”) in spite of the servile of the court order restraining them from occupying or dealing on the suit property.

The plaintiff has sought the help of the Kisumu central police station to facilitate the implementation of the court order issued herein and to enable the plaintiffs peaceful enjoyment and occupation of the suit property, however the police have demanded from the plaintiff to first obtain a court order given on 3<sup>rd</sup> September, 2021 and issued on the 9<sup>th</sup> September 2021 before they can superintend compliance of the same, hence necessitating filing of the instant application.

The actions by the respondents are illegal and improper and are contemptuous of the court order issued.

The application requires police assistance to enforce the order of the court and stop the 1<sup>st</sup> defendant from doing further construction on the suit property and to stop the hired hooligans from interfering with its peaceful occupation and enjoyment of the same.

The plaintiff undertakes to meet the cost of the security apparatus provided for the implementation of the order given on the 3<sup>rd</sup> September, 2021 and issued on the 9<sup>th</sup> September 2021 with a view to protect the suit property.

The Honorable court has an overriding objective to ensure that the order given on 3<sup>rd</sup> September, 2021 and issued herein on 9<sup>th</sup> September, 2021 was not issued in vain and that the Kenya Police service core function is to ensure that rule of law is observed regardless of the nature and circumstances of the case.

The order sought for herein is necessary for the ends of justice to be met and to prevent disregard of the order issued herein.

Unless the order sought herein is granted 1<sup>st</sup> defendant agents, employees, servants and or other third parties will continue to interfere with the plaintiff peaceful occupation and enjoyment of suit land in flagrant violation of the court order or injunction issued herein.

The 1<sup>st</sup> Respondent filed the grounds of opposition out of time and there is no evidence of service of the same and therefore I will not consider the same.

This court is reluctant to engage the Police Services in the enforcement of orders issued under Order 40 Rule 3 of the Civil Procedure Rules. Order 40 of the Civil Procedure Rules provides:-

**“ (1) In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.**

**(2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.**

**(3) An application under this rule shall be made by notice of motion in the same suit.”**

The provision of Section 1a, 2a and 3b of the Civil Procedure Act do not help as issuing such order would be circumvent the clear provisions of Order 40 Rule 3 of the Civil Procedure Rules.

The issues raised by the Applicant if true, manifest a clear contempt of the court order and therefore the appropriate provisions of law should be applied. Application is disallowed with costs in the cause.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 22<sup>nd</sup> DAY OF FEBRUARY, 2022**

**ANTONY OMBWAYO**

**JUDGE**

*This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*