



**REPUBLIC OF KENYA**

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

**PETITION NO. 7 OF 2019**

**SACAPHESO INTERNATIONAL LIMITED....PETITIONER/APPLICANT**

**VERSUS**

**THE NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**KISII COUNTY GOVERNMENT.....4<sup>TH</sup> RESPONDENT**

**PACIFICA MWANGO (sued as the Legal Administrator of the**

**Estate of SIMON KEGESA, Deceased).....5<sup>TH</sup> RESPONDENT**

**RULING**

**INTRODUCTION**

1. This is a Ruling in relation to an Application filed on 1<sup>st</sup> November 2019 seeking the following orders:

1. That the Application herein be Certified Urgent and the same be heard *Ex-parte* in the first instance.

2. Pending the hearing and determination of the instant Application the Honourable Court be pleased to grant an Interim Conservatory Order, barring and/or prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein either by themselves, agents, servants and/or anyone acting on their instructions from executing, implementing, enforcing and/or carrying the Revocation of the title over and in respect of **LR NO. KISII MUNICIPALITY/BLOCK III/289** (hereinafter referred to as the "Suit Property").

3. Pending the hearing and determination of the instant Application, the Honourable Court be pleased to grant an Interim Order of Injunction, prohibiting and/or restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein either by themselves, agents, servants and/or anyone acting on their instructions from conducting and/or further carrying out any proceedings touching and/or concerning the review of the lease over and in respect of **LR NO. KISII MUNICIPALITY/BLOCK III/289** and/or making any adverse recommendations thereon and/or in any manner interfering with the Petitioner/Applicant's ownership, title to and/or developments on the Suit Property, without due regard to the provisions of the National Land Commission Act, 2012 and the Constitution 2010.

4. Pending the hearing and determination of the instant Application, the Honourable court be pleased to grant an Interim Order of Injunction restraining and/or prohibiting the 5<sup>th</sup> Respondent either by herself, agents, servants and/or anyone claiming under the 5<sup>th</sup> Respondent from entering into, re-entering, trespassing onto, alienating, building on, interfering with and/or in any other manner dealing with the Suit Property, that is **LR NO. KISII MUNICIPALITY/BLOCK III/289** and/or any portions thereof, whatsoever and/or howsoever.

5. The Honourable Court be pleased to grant Conservatory Order, barring and/or prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein either by themselves, agents, servants and/or anyone acting on their instructions from executing implementing, enforcing and/or carrying the revocation of the title over and in respect of **LR NO. KISII MUNICIPALITY/BLOCK III/289** (hereinafter referred to as the suit property), pending the hearing and determination of this Petition.

6. The Honourable Court be pleased to grant an Order of Temporary Injunction, prohibiting and/or restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein either by themselves, agents, servants and/or anyone acting on their instructions from conducting and/or further carrying out any

proceedings touching and/or concerning the review of the lease over and in respect of **LR NO. KISII MUNICIPALITY/BLOCK III/289** and/or making any adverse recommendations thereon and/or in any other manner interfering with the Petitioner's/Applicant's ownership, title to and developments on the Suit Property, without due regard to the provisions of the National Land Commission Act, 2012 and the Constitution 2010 pending the hearing and determination of this Petition.

7. The Honourable Court be pleased to grant an Order of Temporary Injunction, prohibiting and/or restraining the 5<sup>th</sup> Respondent either by herself, agents, servants and/or anyone claiming under the 5<sup>th</sup> Respondent from entering into, re-entering, trespassing onto, alienating, building on, interfering with and/or in any other manner dealing with the suit property, that is **LR NO. KISII MUNICIPALITY/BLOCK III/289** and/or any portions thereof, whatsoever and/or howsoever, pending the hearing and determination of this Petition.

8. The Honourable court be pleased to give appropriate directions and/or orders towards the expeditious hearing and disposal of the Petition herein.

9. Costs of this Application be borne by the Respondents.

10. Such further and/or other orders be made as the court may deem fit and expedient.

2. The Application is premised on the grounds set out in the Application and the Supporting Affidavit of Calvin Monari Kenani sworn on 1<sup>st</sup> November 2019.

3. The 4<sup>th</sup> Respondent filed a Replying Affidavit sworn by their advocate, one Kennedy Chweya Onsembe on 10<sup>th</sup> February 2020.

The parties were directed to canvass the Application by way of written submissions.

#### **ISSUES FOR DETERMINATION**

4. Having considered the pleadings and submissions, the issues that arise in this Application are as follows:

**i. Whether the Applicant/Petitioner has met the threshold necessary for the grant of a temporary injunction.**

**ii. Whether the Conservatory Orders sought by the Applicant/Petitioner should be granted.**

#### **ANALYSIS AND DETERMINATION**

5. The Applicant filed its submissions on 4<sup>th</sup> August 2020 in support of their Application dated 1<sup>st</sup> November 2019; unfortunately, all the Respondents failed to file their submissions.

6. The guiding principles for granting injunctions are now well established; the threshold enunciated in the celebrated case of **Giella v Cassman Brown & Co. Ltd (1973) E.A 358**.

7. First, an Applicant must show a *prima facie case* with the probability of success. Secondly, an Interlocutory Injunction will not normally be granted unless the Applicant will suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, where the court is in doubt, it will decide the Application on a balance of convenience.

8. A reading of the Applicant's submissions indicates that its arguments primarily dwell on the substantive issues meant for determination in the main Petition.

9. Learned counsel regrettably went on a tangent and completely failed to place viable arguments before this court to demonstrate why the Applicant ought to be granted a Temporary Injunction. In essence they dropped the ball at the onset and failed to establish the threshold for a temporary injunction in **Giella v Cassman Brown**.

10. In the circumstances, the Applicant has failed to meet the threshold necessary for a grant of a Temporary Injunction.

Additionally, the Conservatory Orders sought in the Application are similar to the ones in the main Petition and are essentially final orders; the same cannot be granted at this stage.

11. In view of the foregoing, it is my finding that this Application is not merited and parties are advised to take a hearing date for the main Petition.

For avoidance of doubt, the Application dated 1<sup>st</sup> November 2019 is hereby dismissed and the costs shall be in the cause.

It is so ordered.

**Dated, Signed and Delivered at Kisii this 27<sup>th</sup> Day of January, 2021.**

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**J. M. ONYANGO**

**JUDGE**