



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. EO17 OF 2020

HASS PETROLEUM (K) LIMITED.....PLAINTIFF

-VERSUS-

CITY MANAGER, CITY OF KISUMU.....DEFENDANT

RULING

Hass petroleum (K) Ltd hereinafter referred to as the applicant has come to court against the City Manager City of Kisumu, hereinafter referred to as the Respondent by way of plaint dated 20/12/2020 for an order of a permanent injunction against the defendant, whether by himself, through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority from evicting, selling, disposing, charging, transferring, pledging, leasing, demolishing, destroying, bulldozing through or by other means whatsoever dealing with the suit property owned by the plaintiff known as KISUMU MUNICIPALITY/BLOCK 6/551.

He states that the demolition of the plaintiff's perimeter wall was illegal, unlawful and null and void ab initio. The damages incurred by the plaintiff from the said demolition assessed at Kshs. 1,175,000.00 be met by the defendant. Cost of the suit with interests. Any other relief that this Honourable court deems fit and just to grant to meet the ends of justice.

The plaint is accompanied with a notice of motion dated 21/12/2020 for an order that this Honourable Court be pleased to grant an order in the temporary injunction do issue restraining the defendant whether by himself, through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority from evicting, selling, disposing, destroying, bulldozing through or by other means whatsoever dealing with the suit property owned by the plaintiff known as KISUMU MUNICIPALITY/BLOCK 6/551 until the determination of this suit or further orders of this Honourable Court.

The application is based on grounds that the Plaintiff is the registered proprietor of all that is known as KISUMU MUNICIPALITY/BLOCK 6/551. The Plaintiff has been diligently paying his land rates and land rent and the same is up to date. The defendant either by himself through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority have on the 18/12/2020 demolished the perimeter wall of the property known as KISUMU MUNICIPALITY/BLOCK 6/551 exposing the plaintiff's assets to vandalism and or theft. The defendant either by himself through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority have continued to threaten further demolitions of the said property known as KISUMU MUNICIPALITY/BLOCK 6/551.

The defendant either by himself through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority have continued to threaten to evict the plaintiff's from the said property known as KISUMU MUNICIPALITY/BLOCK 6/551 without any valid eviction notice and or court order.

The Plaintiff is apprehensive of further damages and or eviction which is based on an illegality being carried out by the defendant either by himself through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority.

Unless the orders sought are granted there is real danger of the defendant evicting the plaintiff from its property and should that happen the plaintiff stands to suffer irreparable loss that would not be adequately compensated in damages.

The balance of convenience tilts in favour of granting of the orders sought which would have mitigated the losses to both parties to this suit.

The defendant filed defence and counter claim, claiming that the suit property is a public property.

By way of Counterclaim the Defendant reiterates the contents of the Defence herein and states that by reason of the Plaintiff's illegal land grab either through fraud or illegally, un-procedurally or through a corrupt scheme, no protection of the law should be granted to the Plaintiff and the said suit property should revert back to the true owners, the people of Kenya.

The alleged purchase of the suit property by the Plaintiff is contrary to express statutory procedure was erroneous and not backed by law and therefore invalid.

Public land cannot be offered to private individuals if the public purpose for which the land was reserved still exist. The suit property is owned by the County Government of Kisumu which is a public body and the land was held for a public purpose.

The Plaintiff has violated the Constitution by contravening express and mandatory constitutional and statutory provisions of law in relation to the acquisition of public property held by public bodies for a public purpose. The Plaintiff furthered the illegality by trespassing on the suit property and constructing therein an illegal perimeter wall.

Failure to follow the procedure laid down under Sections 3, 9, 13, and 14 of the Government Lands Act which provides namely that only the President can alienate Government Land, Government Land must be advertised prior to being alienated, and parties who would be affected given room for raising any objections, compensation or persons who would be affected, renders any title issued in relation to the suit property illegal, irregular and therefore null and void.

The Defendant prays for a declaration that the purported purchase of the leasehold title comprised in the Kisumu municipality/Block 6/551 by the Plaintiff is invalid for failure to adhere to express statutory provisions as stipulated under the applicable laws; A declaration that the failure to allow laid down procedure under the Government Lands Act for alienation of Public Land renders the Plaintiff's title to the land comprised in the Kisumu municipality/Block 6/551 irregular and null and void. A declaration that the Commissioner of Lands erred in law in issuing the leasehold title comprise in the Kisumu Municipality/Block 6/551 to the Plaintiff; An order under Section 80 (1) of the Land Registration Act directing the Registrar to rectify the register by cancelling the registration of the leasehold title comprised in the Kisumu municipality/Block 6/551 to the Plaintiff.

An order directing the successor of the Commissioner of Lands to issue the requisite title with respect to the land comprised in the Kisumu Municipality/Block 6/551 to the County Government of Kisumu as the registered proprietor;

An order directing the Plaintiff and/or their servants, agents and/or assigns, to forthwith to vacate the premises comprised in the land parcel Kisumu municipality/Block 6/551, and if they do not so vacate within 15 days of the date hereof, the Defendant be at liberty to evict the Plaintiff.

A permanent injunction, barring the Plaintiff by themselves, their servants/agents and/or assigns from entering, being upon, or utilizing the land parcel Kisumu municipality/Block 6/551. General damages for trespass and interest thereon at court rates; and Such other relief as this Honourable Court deem fit to grant.

In grounds of opposition filed by the defendant, the defendant relies on grounds of opposition and points of law without facts. The defendant has not filed any replying affidavit to demonstrate that the property is public property.

I do find that the plaintiff has title to the suit property issued by the Land Registrar which has not been impeached in accordance with Article 40 (6) of the Constitution of Kenya, therefore he has demonstrated a prima facie case with likelihood of success.

The Plaintiff is in possession and use of land, hence if evicted he is likely to suffer irreparable loss. On balance of convenience, I do find that the Plaintiff will be more inconvenienced if injunction is not granted.

I do grant prayer 3 thus an order in the temporary injunction do, and is hereby issued restraining the defendant whether by himself, through its servants, agents, workers, proxies, representatives and/or any other person assigned or with their authority from evicting, selling, disposing, destroying, bulldozing through or by other means whatsoever dealing with the suit property owned by the plaintiff known as KISUMU MUNICIPALITY/BLOCK 6/551 until the determination of this suit or further orders of this Honourable Court. Costs in the cause. Orders accordingly.

DATED AT KISUMU THIS 24TH DAY OF FEBRUARY, 2021

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 15th March 2019.

ANTONY OMBWAYO

JUDGE