

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC NO. E15 OF 2020

HASHI ENERGY LTD previously T/a HASHI EMPEX LTD.....PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF KISUMU.....DEFENDANT

RULING

On the 21/12/2020, this court certified the application herein as urgent and granted orders that the respondent to file and serve reply within seven (7) days. The applicant to file and serve submissions within seven (7) days of service. The Respondent to file and serve submissions within (7) days. Ruling on the 4th February 2021.

In the meantime status quo be maintained on the ground in terms of prayer 2 of the Notice of motion dated 17th December 2020 thus **that pending the hearing and Determination of the Application interparte, an Order of temporary injunction restraining the Defendant, its agents, servants employees and/or anybody claiming through them howsoever form evicting and/or demolishing the structures that are situated on plaintiff's pieces of land and or properties that are described as or situated on KISUMU MUNICIPALITY/BLOCK 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458 AND 459 and/or interfere with its operation and peaceful occupation of these properties in any manner was granted.**

The Respondents have not complied with the orders of the court despite being served. The allegations by the applicant remain uncontested.

It is a trite law that there are those conditions to be met before an interlocutory injunction can be granted as exposted in Giella v Cassman Brown Co. Ltd 1973 E.A. 358.

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”

I have considered the application and the submissions on record and do find that the applicant has established a prima facie case with a likelihood of success as they have title to the suit Properties.

Moreover, the applicant has invested on the property and therefore if injunction is not granted he is likely to suffer irreparable damage that may not be adequately compensated. Lastly, that the applicant is likely to be more inconvenienced if injunction is not granted.

Ultimately, I do grant a temporary injunction restraining the Defendant, its agents, servants employees and/or anybody claiming through them howsoever form evicting and/or demolishing the structures that are situated on plaintiff's pieces of land and or properties that are described as or situated on KISUMU MUNICIPALITY/BLOCK 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458 AND 459 and/or interfere with its operation and peaceful occupation of these properties in any manner pending the hearing of the suit. Costs in the cause.

DATED AT KISUMU THIS 4th 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