



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. E003 2021

IMPACT CHEMICALS LIMITED.....PLAINTIFF/APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF KISUMU.....1ST DEFENDANT/RESPONDENT

LAND REGISTRAR, KISUMU.....2ND DEFENDANT/RESPONDENT

KENYA COMMERCIAL BANK LTD.....INTERESTED PARTY

RULING

SUMMARY OF FACTS

The Plaintiff filed the application seeking an injunction restraining the 1st Respondent by itself or its agents from entering, remaining, removing, wasting, subdividing, building or otherwise dealing in anyway with the properties known as KISUMU MUNICIPALITY/BLOCK 13/107 & KISUMU MUNICIPALITY/BLOCK 13/109.

The Plaintiff claims to have bought the two pieces of land from one Professor Victor Omondi at a consideration of 16 million after carrying out due diligence and ascertaining that indeed the titles were authentic. That plans were even underway for construction of a hotel thereon. That since buying the plots they have been diligently paying the land rates, as required by the 1st Defendant.

The plaintiff contends that after doing all this the 1st Defendant moved into the properties and demolished the perimeter walls and are now threatening to evict the them on the pretext that the suit properties are public land, despite having previously approved construction of a Hotel thereon.

The 1st Defendant however filed a Replying Affidavit dated 12th March 2021 opposing the Application on the grounds that the Plaintiff's lease certificates were obtained fraudulently, that the fact that the lease certificates were signed by the land registrar and not by the National Land Commission pointed to some element of fraud. The 1st Defendant further stated that if the Plaintiff had done their due diligence well they would have noticed that the suit properties were part of un-surveyed Government land set aside for the Municipal Council of Kisumu. It was their further contention that they had procedurally commenced the process of recovery of the suit parcels of land in the interest of the public and that they had not demolished any fence given that the Plaintiff was not in occupation of the plots.

In the 1st Defendants' view, the application was vexatious, misconceived, irregular, bad in law, and an abuse of the process of the court and the same should be struck out or dismissed and the main suit heard.

ISSUES & APPLICABLE LAW

1. Whether the plaintiff has met the threshold for grant of orders sought.

The principles for determining whether to grant an interlocutory injunction are laid out in *Giella v Cassman Brown* [1973] EA 358 at 360: the applicant must show a prima facie case with a probability of success; that such an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury; and finally, where the court is in doubt, it will decide the application on a balance of convenience.

On a prima facie case

A prima facie case was well defined in the case of **MRAO LTD V FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS CIVIL APPEAL NO 39 OF 2002** as:-

“... in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

In the present case the plaintiff has provided Lease Certificates that seem to indicate ownership of the suit parcels of land. They have also provided plans showing that they have intention to build thereon. The 1st Defendant has alleged in their reply that the process of acquisition of the titles was fraudulent, however proof of this allegation will only clearly come out after full hearing. in view of the foregoing it is my finding that the Plaintiff has established a prima facie case with probability of success.

On irreparable damage

The plaintiff has alluded to the fact that they are in occupation of the two pieces of land, they have however not provided any proof of the same. The have also talked about their fence being brought down but haven't annexed any evidence of the destruction. It is therefore my finding that the Plaintiff has not shown that they will suffer damages incapable of compensation by way of damages.

On balance of probabilities.

Having established that the Applicant has a prima facie case it is my view that the balance of probability tilts in favour of the plaintiff/Applicant. The plaintiff's prayers for temporary injunction should be and are hereby granted.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 3RD DAY OF SEPTEMBER, 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