



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 240 OF 2015**

**SHAJANAND HOLDINGS LTD.....PLAINTIFF**

**VERSUS**

**MICHAEL KIPTORUS.....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KISUMU.....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KISUMU.....1<sup>ST</sup> INTERESTED PARTY**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

The Application before me is dated 3<sup>rd</sup> December, 2019. The applicant, Shajanand Holdings Limited seeks orders that an injunction do issue directed at the 1<sup>st</sup> and 2<sup>nd</sup> respondents their agents, employees, workers, agents and/or whomsoever jointly and severally restrained them from taking possession, blocking the applicant and/or in any way interfering with the plaintiff/applicant's quiet possession of the suit property Kisumu/Municipality/Block 4/154. The costs of this application be provided for.

The application is based on grounds that the court in its judgement of 15<sup>th</sup> November, 2019 issued an order for the eviction the 1<sup>st</sup> Respondent from the Plaintiff/Applicant's suit property Kisumu/Municipality/Block 4/154.

The Applicant has since evicted the 1<sup>st</sup> respondent from the suit property in line with the judgement of the court. The 1<sup>st</sup> respondent and employees of the 2<sup>nd</sup> Respondent have now embarked on harassing the plaintiff/applicant who is now in possession of the suit property.

The 1<sup>st</sup> respondent and employees of the 2<sup>nd</sup> Respondent have constantly been locking the Applicant's gate to the suit property with padlocks to frustrate the plaintiff/applicant from freely moving about its property.

The 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent are denying the applicant access and economic use of the suit property despite the applicant having evicted the 1<sup>st</sup> respondent.

The applicant stands to suffer irreparable injury in the event the injunction is not granted. The supporting affidavit of Chandrakant Chhabhadia reiterates the grounds. The respondent has responded vide the replying affidavit of Arnord Omondi Guya, an employee of the 2<sup>nd</sup> defendant. He dwells on the fact that the decree of the court was improperly executed. He also appears to complain on the consequences of the judgement.

I have considered the application, the replying affidavit and rival submissions and do find that the 1<sup>st</sup> and 2<sup>nd</sup> respondent's behaviour borders on contempt of court orders as they appear intend on obstructing the applicant from enjoying fruit of the judgement of the court. This court has determined the dispute and therefore is functus officio. Parties should move to the next level of litigation. The applicants application is misconceived as an injunction cannot be issued where there is no suit pending. Moreover the injunction sought is permanent in nature and should have been sought in the suit. The applicant can only file an application for contempt. The application is dismissed with costs. Orders accordingly.

**DATED, DELIVERED and SIGNED THIS 12<sup>th</sup> DAY OF MAY, 2020.**

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice and with the consent of the parties.

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**