



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU

Environment & Land Case No.191 Of 2015

UNIGEN AGENCIES LTD.....PLAINTIF

VERSUS

SARNAGAR SINGH HAYER.....1ST DEFENDANT

CHARANJIT SINGH HAYER.....2ND DEFENDANT

CHIEF LAND REGISTRAR3RD DEFENDANT

DISTRICT LAND REGISTRAR4TH DEFENDANT

NATIONAL LAND COMMISSION.....5TH DEFENDANT

R U L I N G

Unigen Agencies Limited, the Applicant, filed the notice of motion under Certificate of urgency dated 18th August 2015 against **Sarnagar Singh Hayer, Charanjit Singh Hayer, Chief Land Registrar, District Land Registrar, and National Land Commission** hereinafter referred to as 1st to 5th Respondents seeking six prayers. The principal prayer is the third one which reads:

" 3. That this Honourable court be pleased to issue an order of mandatory injunction at this stage directed to the 1st and 2nd defendants/respondents to hand over to the plaintiff a vacant possession of the property **L.R. NO.KISUMU MUNICIPALITY BLOCK11/180** within 30 days of service of the court order herein and in default eviction order to issue in favour of the plaintiff and against the 1st and 2nd defendant. The eviction order to be executed by the licensed court bailiffs."

The application is based on 42 grounds set out on its face and supported by the affidavit sworn by Timmy Kimaru Karatu, a director of the Applicant, on the 18th August 2015.

The application was served on the 1st, 2nd and 4th Respondents. {see affidavit of service sworn by Julius Otieno Raminya on 17th September 2015}. There was no explanation given why 3rd and 5th defendants were not served though they were listed as Respondents in the heading of the application.

The 1st, 2nd and 4th Respondents though served with the application have not failed any replying papers. When the application came up for hearing counsel for the Applicant made his submissions and asked the court to issue prayers 3 and 4. Prayer 3 is for mandatory injunction to place the Applicant in possession of the suit land, **Kisumu Municipality/Block 11/180**, while prayer 4 is for the police to supervise the execution of prayer 3.

The court has considered the grounds set out on the application, the supporting affidavit and submissions by counsel. It is clear from the copy of certificate of lease annexed to the supporting affidavit that the Applicant got registered as the proprietor of the leasehold interest on 26th February 1997 for a period of 99 years from 1st January 1989. The Applicant has availed receipts for payment of rates and rent to the relevant offices. It is however not clear, from the materials or facts presented, whether the suit property was vacant when the Applicant got registered as the proprietor.

The court has noted the contents of paragraph 4 of the statement of defence (undated) which was filed by the 1st and 2nd Defendants to the effect that they "have been living in the said parcel of land for over 20 years." While the court has jurisdiction to issue mandatory injunction at interlocutory stages where special circumstances have been established, the Applicant herein has

not established any special circumstances that demands the issuance of mandatory injunction at this stage. The fact that the Applicant is the registered proprietor cannot suffice as a special circumstance as he has been the registered proprietor since 1997. There are no facts presented to the court to show any change of circumstances since the Applicant got registered with the suit property that demands that a mandatory injunction be issued at the interlocutory stage without affording all the parties an opportunity to be heard in the main suit and a decision made thereafter on merit.

For reasons set out above the application dated 18th August 2015 is without merit and is dismissed with costs in the cause.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/10/2015

Dated and delivered this 7th day of October, 2015

In presence of

Plaintiff

Defendant

Counsel

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/10/2015

7/10/2015

S.M. Kibuja J.

Oyugi Court clerk

Mr M. Omondi for 1st and 2nd Defendants/Respondents

Mr Kowino for Arusei for Plaintiff/Applicant.

Court: Ruling delivered in open court in presence of Mr Omondi for 1st and 2nd Defendants.

Mr Kowino for Arusei Plaintiff/Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/10/2015