



REPLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.109 OF 2017

SIMONASH INVESTMENT LIMITED.....PLAINTIFF

VERSUS

KENYA NATIONAL HIGHWAY AUTHORITY.....1ST DEFENDANT

SOLEL BONEH INTERNATIONAL HOLDINGS AG (KENYA)....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. **Simonash Investment Limited**, the Plaintiff, filed the notice of motion dated 21st March 2017 seeking to have **Kenya National Highways Authority, Solel Boneh International Holdings AG (K) Ltd and the Honourable Attorney General**, hereinafter referred to as the 1st to 3rd Defendants respectively, restrained by themselves, their servants, agents or otherwise howsoever from demolishing, trespassing onto, entering, remaining on, taking possession, developing or in any other way interfering with the Plaintiff's title to, occupation and user of the property L.R. Kisumu/Kanyakwar 'A' /80 situated at Kisumu County, pending the hearing and determination of this suit.

2. The application is based on the nine (9) grounds on its face marked (a) to (i) and is supported by the affidavit sworn by Richard Otieno Sikuku, a director, on the 21st March 2017.

3. That though the three Defendants entered appearance and appointed counsel, only the 2nd Defendant filed replying papers, to wit the replying affidavit sworn by Eugeny Strelniker, the project manager on the 5th April 2017.

4. That the application came up for hearing on the 20th June 2017 when among others, directions on filing and exchanging written submissions were given. The counsel for the Plaintiff filed their submissions dated 21st September 2017. That when the matter came up for mention on the 5th December 2017, today's ruling date was fixed after the court declined to extend the time for the Defendants to file replying papers and or submissions.

5. The following are the issues for the court's determinations;

a. Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction order to issue at this stage.

b. Who pays the costs.

6. The court has carefully considered the grounds on the notice of motion, affidavit evidence by the Plaintiff and 2nd Defendant, submissions by counsel for the Plaintiff, the report from the Land Surveyor dated 16th June 2017 and come to the following findings;

a. That the Plaintiff is the registered proprietor of land parcel **Kisumu/Kanyakwar 'A'/80** as confirmed by the copy of the title deed and certificate of official search that confirms that they became the registered proprietor on the 6th December 2010.

b. That the Plaintiff as the indefeasible and absolute owner of the said land in terms of **Section 26 of Land Registration Act No.3 of 2012** is entitled to rights and privileges of a registered proprietor as set out under **Sections 24 and 25 of the said Act**.

c. That the Plaintiff's position that the markings made by the Defendants are on its land, and that the land has not encroached onto the road reserve, appears to be supported by the Land Surveyor's report dated 16th June 2017 that found that "the parcel number

Kisumu/Kanyakwar 'A'/80 has not encroached into the highway road.”

d. That in view of the finding in (c) above, the court finds that the Plaintiff has established a prima facie case upon which an order of temporary injunction may be issued pending the hearing and determination of this suit.

7. That flowing from the foregoing, the court finds merit in the Plaintiff's notice of motion dated 21st March 2017 and is allowed in terms of prayer 3 with costs.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 14TH DAY OF MARCH 2018

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr. Odunga for the Plaintiff

Mr. Anule for Kamanda for 2nd Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/3/2018

14/3/2018

S.M. Kibunja Judge

Joan Court Assistant

Parties Absent

Mr. Oduga for the Plaintiff

Mr. Anule for Kamanda for 2nd Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/3/2018