



**REPUBLIC OF KENYA**

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

**ELC CASE NO.240 of 2015**

**SHAJANAND HOLDINGS LIMITED.....PLAINTIFF**

**VERSUS**

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

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

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

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

**RULING**

1. **Shajanand Holdings Limited**, the Plaintiff, vide notice of motion dated and filed on 6<sup>th</sup> March 2017, seeks for temporary injunction restraining Michael Kiptorus, the 1<sup>st</sup> Defendant, from carrying out any renovations, demolition or interference whatsoever with land parcel Kisumu **Municipality/Block 4/154** pending the hearing and determination of this suit. The application is based on four grounds marked (a) to (d) on the notice of motion and supported by the affidavit sworn by Chandrakant Chhabhadia.
2. The notice of motion is opposed by the 1<sup>st</sup> Defendant through the replying affidavit sworn on the 22<sup>nd</sup> March 2017.
3. The notice of motion came up for hearing on the 14<sup>th</sup> June 2017 when Mr. Odeny and Mr. Achura, the learned counsel for the Plaintiff and 1<sup>st</sup> Defendant respectively, made their oral submissions.
4. The issues for determination by the court are as follows;
  - a) Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction to issue at this stage.
  - b) Who pays the costs.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, the oral submissions by counsel and come to the following conclusions;
  - a) That Land parcel Kisumu Municipality/Block 4/154 was according to the copy of certificate of lease attached to the 2<sup>nd</sup> Defendant's list of documents dated 18<sup>th</sup> May 2016, first registered on the 28<sup>th</sup> September 1975 in the name of Municipal Council of Kisumu.

b) That the Plaintiff has availed a certificate of lease over the same land dated 23<sup>rd</sup> January 2013 showing that they become the registered proprietor on the same date under entry number 5.

c) That as the Plaintiff is the current registered proprietor, the court is obligated under **Section 26 (1)** of the Land Registration Act to take their certificate of lease (title) as prima facie evidence that they are the absolute and indefeasible owner of the said land subject to the encumbrances, easement restrictions and conditions contained or endorsed in the certificate. That their title can only be challenged on the ground of fraud or misrepresentation to which they are proved to be a party or for reasons that the title is shown to have been acquired illegally, unprocedurally, or through a corrupt scheme.

d) That the Plaintiff's title to the suit land has been challenged by the 2<sup>nd</sup> Defendant through their counter claim dated 18<sup>th</sup> May 2016 on the basis of fraud. That until the 2<sup>nd</sup> Defendant challenge of the Plaintiff's title is proved to the standard required through the main hearing of the suit, the Plaintiff's interests and rights over the said property remains as set out in **Section 24 and 25** of the land Registration Act..

e) That the Plaintiff filed this suit vide their plaint dated 17<sup>th</sup> September 2015 against the 1<sup>st</sup> Defendant as the only Defendant then, seeking to have him evicted from the suit land. That through the pleadings filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants it is clear that the 1<sup>st</sup> Defendant is an employee of the 2<sup>nd</sup> Defendant and that the former resides in a house in Kisumu Municipality/Block 4/155A and not Kisumu Municipality /Block 4/154.

f) That the Plaintiff's contention is that the 1<sup>st</sup> Defendant should be restrained from carrying out any renovations, demolitions or interference with land parcel Kisumu Municipality/Block 4/154. That the 1<sup>st</sup> Defendant has responded by providing photographs of the building he resides in showing the windows and doors were intact which puts into question the validity of the Plaintiff's claim that demolition of walls and windows had commenced.

g) That in view of the 1<sup>st</sup> Defendant rebuttal to the Plaintiff's claim as set out in (f) above, the court finds that the Plaintiff has failed to establish a prima facie case upon which temporary injunction can be based at this stage. That in any case, the value of any damages to the development on the said property can easily be established and appropriate order of damages in compensation issued, were the Plaintiff to be successful after hearing of the main suit. That the balance of convenience tilts against issuing the temporary injunction at this stage to enable the parties put their efforts in prosecuting and defending the main suit for a determination on merit.

6. That for reasons set out above, the court finds that the notice of motion dated and filed on 6<sup>th</sup> March 2017 is without merit and is dismissed with costs and the interim order of 13<sup>th</sup> March 2017 is hereby vacated.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2017**

In presence of;

Plaintiff            Absent

Defendants          Absent

Counsel Mr Odeny for Plaintiff

Mr Achura for Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/9/2017**

27/9/2017

S.M. Kibunja Judge

Oyugi/Joane court assistant

Parties absent

Mr Odeny for Plaintiff

Mr Achura for Defendants and Interested parties

Court: Ruling delivered and dated in open court in presence of Mr. Odeny for the Plaintiff and Mr. Achura for Defendants and interested parties.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/9/2017**