



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL CASE NO. 193 OF 2011

WILLIAM OLOTCHPLAINTIFF

-VERSUS-

TOWN COUNCIL OF UKWALA.....DEFENDANT

RULING

1. The application before court is a Notice of Motion dated 31st October, 2011 brought pursuant to Order 40 Rule 2(1) of the Civil Procedure Rules and Sections 63(c), 1A, 1B & 3A of the Civil Procedure Rules seeking for:-

“1. That this matter be certified as urgent and be heard ex parte in the 1st instance.

2. That a temporary injunction be granted restraining the respondent their employees, servants, agents or representatives from encroaching, trespassing, subdividing, transferring and/or interfering with Plot No. 39 Sega Market (previous No. 40) until the application is heard and determined.

3. That a temporary injunction be granted restraining the respondent, their employees, servants agent and or representatives from encroaching, trespassing, subdividing and selling and interfering with the Plot No. 39 Sega Market previously no. 40 until the issue is heard and determined.

Costs of this application.”

Prayers 1 & 2 are now spent. For determination are prayers 3 & 4.

2. The application is based on the affidavit of the applicant **WILLIAM OLOTCH OWAKO** and the grounds on the fact of the application as follows; the defendant is subdividing plot No. 39 Sega market (previously 40), the defendant has disregarded the plaintiffs' right over the land, the plaintiffs' use and occupation is being interfered with.

3. The respondent through its town clerk **Patrick O. Wakine** objected to the application on the grounds that; the process of transfer was incomplete as the respondent did not make a decision or ratify the same, the applicant has not exhibited proof of ownership; the purported transfer was after 15 years; the applicant has no allotment letter, the application is an abuse of court process.

4. There is no dispute that the applicant herein purchased the land in question. Indeed after entering into the sale agreement the applicant although several years later paid for the transfer which moneys the respondent received and acknowledge. There are several issues raised; whether the transfer was complete; whether the same is illegal etc. It has however not being disputed that the applicant has been in possession and communicated severally with the respondent's officials.

5. The outstanding issues are better argued at full hearing. For now it is my view that the balance of convenience tilts in favour of the applicant. I therefore grant prayer 3.

Costs to abide the outcome of the case.

DATED AND DELIVERED THIS 16TH DAY OF FEBRUARY, 2012.

ALI-ARONI

JUDGE

In the presence of:

..... present for Appellant

.....present for Respondent