

REPUBLIC OF KENYA

High Court at Kisumu

Civil Suit 26 of 2012

DENIS OCHOLA OLANGOPLAINTIFF/APPLICANT

VERSUS

THOMAS MBOYA OYIER1ST DEFENDANT/RESPONDENT

MUNICIPAL COUNCIL OF KISUMU.....2ND DEFENDANT / RESPONDENT

RULING

The plaintiff/applicant application dated 14th August 2012 prays that this court issues a temporary injunction to restrain the defendant from trespassing or encroaching on land parcel number **Kisumu Municipality Block 5/744** pending the hearing and determination of this suit. The same is supported by his sworn affidavit dated 9th August 2012.

The applicant avers that he purchased the suit land from one **Getrude Akello** on 7th June 2011 for a total purchase consideration of Kshs. 1,800,000. The said vendor was an allottee of the suit property from the 2nd defendant. The applicant has exhibited the sale agreement as well as the documents from the 2nd defendant to the said Getrude Akello.

The affidavit further shows that there has been development on the said land where a flat slab foundation has been done. There is also 2 fences parallel to each other.

According to the applicant the first fence was put by him while the 2nd fence and the “mabati” structure was put by the 1st defendant.

The 1st defendant has opposed the application vide his replying affidavit dated 31st August 2012. Where he alleges that he purchased the land from one **Leah Amondi Asewe** who was allotted the suit land by the 2nd respondent. The said affidavit contains various documents including a sale agreement between the 1st defendant and the said Leah Asewe.

At this juncture this court only needs to satisfy itself that the applicant has established a prima facie case and that should the defendant be allowed to proceed the plaintiff /applicant stands to suffer irreparable harm and loss.

From a quick glance at the affidavit evidence on record it appears that Getrude Akello was allotted the suit property by the 2nd defendant. For some reasons the same was repossessed and allotted to one Leah Amondi Asewe who sold it to the 1st defendant. By the time this took place the said Getrude Akello had already done a slab foundation.

I have further seen the letter dated 22nd November 2010 from the Commissioner of Lands to the 2nd defendant clerk in regard to **“Repossessions, Advertisement and Reallocation of Plots within Kanyakwar, Kibos, Migosi, Mamboleo, Milimani, Block 5 and Nyalenda Area”**.

The said letter warns the 2nd defendant to desist from such action since the same run contrary to Chapter 280 Laws of Kenya.

On a balance of convenience I believe the applicant has established a prima facie case. He is already in occupation of the premises and carried on some development before the arrival of the 1st defendant . There are weighty issues to be canvassed during the determination of the substantive cases. I shall in the premises allow the application dated 14th August 2012 with costs to the plaintiff.

Dated, signed and delivered at Kisumu this 14th day of November 2012.

**H.K. CHEMITEI
JUDGE**

HKC/aao