



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.182 OF 2010

SCHOLASTICA RUGURU NDABA.....PLAINTIFF
VERSUS
OLKEJUADO COUNTY COUNCIL.....1ST DEFENDANT
MOSES KITURA.....2ND DEFENDANT
SABURI PARKINE.....3RD DEFENDANT

RULING

1. By an application dated 20th April, 2010, Scholastica Ruguru Ndaba, (hereinafter referred to as the applicant), prays for the following orders:

(i) That the honourable court be pleased to grant a temporary injunction restraining the 1st defendant from allotting, transferring, disposing or in any other way dealing with Plot Number 155 Business (Ongata Rongai) or otherwise described as Plot Number 384 with third parties other than the applicant, pending the hearing and determination of this suit.

(ii) This honourable court be pleased to grant a temporary injunction restraining the 2nd and 3rd defendants from entering or interfering with the applicant's quiet possession of her premises known as Plot Number 155 Business (Ongata Rongai) or otherwise described as Plot Number 384 pending the hearing and determination of this suit.

2. The application is made on the following grounds:

(i) That the applicant is the rightful and legally registered proprietor of Plot Number 155 (Business) Ongata Rongai otherwise described as Plot Number 384.

(ii) That the 1st defendant has wrongfully and illegally issued a letter of allotment in respect of the applicant's above premises to the 2nd and 3rd defendants describing the said premises as Plot Number 384.

(iii) That the 2nd and 3rd defendants have committed numerous acts of trespass and have threatened to continue to interfere with the plaintiff's right to quiet possession and enjoyment of the suit premises.

(iv) That it is only fair and just that this application be heard and determined expeditiously.

3. The application is opposed by the 3rd defendant who has sworn a replying affidavit in which he maintains that he is the allottee of a plot known as 384 Residential Kware Ongata Rongai T from the 1st defendant. The 3rd defendant maintains that the applicant has never been in possession of the said parcel and that he i.e. the 3rd defendant is the lawful owner.

4. I have considered the application, the affidavit in support and in reply, as well as the annexures thereto. Both the applicant and the 3rd defendant have exhibited letters of allotment showing that the plot was allocated to each of them by the 1st defendant. While the applicant's letter refers to the allocated plot as 155 Business – Ongata Rongai T, the 3rd defendant's letter refers to plot No.384 Residential Kware Ongata Rongai T Centre. It is not clear whether the two numbers refer to the same plots but it would appear that the applicant and the 3rd defendant are each claiming the same plot.

5. In the circumstances, I find it fair and just that an order of interlocutory injunction should issue restraining both the applicant and all the defendants from transferring, disposing, or in any way dealing with plot number 155 Business Ongata Rongai or Plot No.384/Residential Kware Ongata Rongai

1, pending the hearing and determination of this suit. Costs shall be in the cause. Orders accordingly.

Dated and delivered this 18th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -

Kosgei for the applicant

Otieno H/B for Mbaabu for the defendants

B. Kosgei - Court clerk