



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC. CASE NO. E029 OF 2021

NELLY ANN ODHIAMBO (suing as the holder of power of Attorney of

BENJAMIN OUMA OTIENDE (P.D. ONYANGO & CO. ADVOCATES).....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KISUMU.....1ST DEFENDANT

CITY MANAGER, KISUMU CITY.....2ND DEFENDANT

RULING

The applicant has come to court against the respondents praying for orders that pending the hearing and determination of this suit there be a temporary order of injunction restraining the respondents wither by themselves, agents, representatives, servants and or any other person authorized by them from demolishing, destroying or interfering with the development on land parcel number KISUMU/MAMBOLEO/UNS. BCR 8 A therein. THAT the cost of this application be borne by the respondents.

The application is based on grounds that the applicant is a holder of power of attorney on behalf of the owner of the said plot number KISUMU/MAMBOLEO/UNS. BCR 8 A with the developments thereon. The respondents herein have marked the said building for demolition of the said residential property on the said land parcel. The respondents do not have any evidence or proper basis to interfere with the said land parcel that absolutely belong to the applicant. The said land parcel is not on a public land. The said development is a source of rental income for the applicant herein. The applicant will suffer irreparable damage if the building is brought down the damage caused cannot be compensated by way of costs. The demolition can take place at any time and the applicant stand to suffer irreparable damage if the said orders are not granted. It is for the interest of justice that this application be allowed.

In the brief supporting affidavit the applicant states that she is the holder of a registered power of attorney on behalf of the owner of the suit land parcel number KISUMU/MAMBOLEO/UNS. BCR 8 A. That sometimes in 2009 the plaintiff herein purchased the suit property from the then owner. That pursuant to ownership of the said property the plaintiff in 2009 put up a storey residential building, which he rented out and was attracting rental income as was indicated in the allotment letter.

That sometimes on 31st March 2021 the respondents through their agents and or servants descended on the suit property without any notice and marked the same ready for demolition. On the same day the respondents also gave a verbal notice that they would at any time demolish the property together with the perimeter wall which prompted the tenants to start vacating the said property. The property is not a public land neither was the same acquired illegally.

The applicant is apprehensive that the respondents want to demolish the property without any valid reason as the said land parcel is not public land and that the owner of the land is up to date with the payment of rates. That on 15th April 2021 the 2nd respondent issued a notice for demolition of the properties encroaching on the Mamboleo slaughter house.

She laments that unless stopped by the court the respondents are likely to proceed with the unlawful demolition of the property on the suit land parcel without hearing the applicant or putting forth evidence to confirm that the suit land parcel was alienated for other public purposes.

The applicant seeks for orders of injunction as against the respondents before going far with their illegal activities on the suit property and to preserve the status of the suit land parcel and the developments thereon pending the hearing and determination of this suit.

That she has been advised by her advocates on record which advice she verily believe to be correct and true that she has a case with high chances of success and that the balance of convenience tilt on her side with regard to the orders sought. I have not seen a reply by the

respondents and therefore the application is not opposed.

The applicant has demonstrated that she is a holder of power of Attorney donated by the registered owner of the suit property.

The respondents have not offered any evidence. The applicant has demonstrated that she has a prima facie case with a likelihood of success as the land is registered in the names of the donor and that the respondents have not demonstrated any interest in the property. If a temporary injunction is not granted the applicant will suffer an irreparable damage as her property will be demolished.

I do grant an order that **pending the hearing and determination of this suit there be a temporary order of injunction restraining the respondents wither by themselves, agents, representatives, servants and or any other person authorized by them from demolishing, destroying or interfering with the development on land parcel number KISUMU/MAMBOLEO/UNS. BCR 8 A therein. THAT the cost of this application be in the cause.**

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24th DAY OF NOVEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE