



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC NO. 19 OF 2019

WILSON OTIENO OMWOM.....PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF KISUMU.....RESPONDENT

RULING

The plaintiff seeks orders that pending the hearing and determination of the suit there be a temporary order of injunction restraining the defendants either by themselves, agents, servants, representatives and or any other person authorized by them from interfering, entering, or in any other manner disturbing the plaintiff's user of Plot No. 9341/123 or any enforcing the Enforcement Notice against the plaintiff or demolishing any structure thereon. The cost of this application be provided for.

The application is based on the grounds that:-

- i. That the plaintiffs are the registered owners of the suit land parcel.***
- ii. That the defendant's intend to demolish the plaintiff's suit land parcel.***
- iii. That the plaintiff/applicant stand to suffer irreparable loss and damages in the event that the orders are not granted.***

In the supporting affidavit, the plaintiff claims to be administrator of the estate of Phoebe Nyando Adhanja. Phoebe Nyando Adhanja was the alleged owner of the suit property. The plot was transferred to the deceased by the defunct County Council of Kisumu. On 29th August, 2018 the plaintiff applied for development permission and paid for the same. He was granted approval by the defunct on 4th June, 2019 an enforcement order was made as alleging no approval was given for the construction. The defendant received a response but threatened to withdraw the fee and proceed with enforcement. The plaintiff claims to have spent Kshs.4 million.

In the replying affidavit of Steve Gome an architect employed by the respondent, he stated that the title held by the plaintiff was obtained unlawfully. It is alleged that the plaintiff did not comply with conditions set in the approved letter.

I have considered the application and the replying affidavit of Steve Gome and do find that the affidavit of Steve Gome contains more allegations without a scintilla of evidence that the title held by the applicant was obtained fraudulently. There is no evidence that the defendant has reported the fraud to the police. On the other hand the letters of administration intestate to the plaintiff were granted on 10th August, 2015 and were due for confirmation on 10th February, 2016. There is no evidence the same were confirmed.

I do find that the plaintiff has established a prima facie case with a likelihood of success as the administrator of the estate of the deceased Phoebe Nyando Adhanja. However developing the property before confirmation of the letter of administration is not proper as the property has not devolved to the plaintiff or the beneficiaries.

I do find that though the plaintiff might suffer loss if a temporary injunction is not granted, the same can be compensated in damages.

It is proper that status quo be maintained until the case is heard and determined on priority basis. Costs in the cause. I do decline to grant an order of injunction but do order that the status quo be maintained, thus no further construction of the premises and no demolition of the same by the county Government of Kisumu. Any breach of this order parties will be liable for punishment. Cost in the cause. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 30th DAY OF January, 2020.

In presence of;

Mr. Kowino for Plaintiff/Applicant

No appearance Responden

A. O. OMBWAYO

ENVIRONMENT & LAND – JUDGE