



REPUBLIC OF KENYA

High Court at Kitale

Environmental & Land Case 14 of 2013

SEVENTH DAY ADVENTIST CHURCH LODWAR..... PLAINTIFF

VERSUS

ANDREW LOKAALA 1ST DEFENDANT

JACOB LOKWAR 2ND DEFENDANT

SUSAN NALUK 3RD DEFENDANT

JEREMIAH APALIA 4TH DEFENDANT

MICHAEL LOWOTON 5TH DEFENDANT

OXFAM GB-LODWAR BRANCH 6TH DEFENDANT

COUNCILOR KANAMKEMER WARD 7TH DEFENDANT

RULING

The Applicant, Seventh Day Adventist Church Lodwar brought a Notice of Motion seeking orders of injunction restraining the Defendants/Respondents, their agents and/or servants from encroaching, developing, sub-dividing, demarcating, ploughing, selling or in any other way interfering with Plot No. 619 located at Kanamkemer in Lodwar pending hearing and determination of the main suit. All the Defendants/Respondents were duly served but none except the 6th Defendant/Respondent responded to the application. During the hearing, the suit against the 6th Defendant was withdrawn against the 6th Defendant. The application therefore proceeded ex-parte. The Applicant contends that it was allocated Plot No. 619 by Lodwar Municipal Council on 20/11/2010 as per the letter of allocation annexed to the Supporting Affidavit of the Notice of Motion. That in March 2012, the Applicant learnt that the area Councilor had permitted some Non Governmental body to put up stores for relief food without its consent. The Applicant further learnt that the 1st to 5th Respondents had encroached onto its land and started clearing the bush and destroying the fence round the plot. The Applicant tried to ask the Respondents to desist from their activities through the Area Chief in vain. This is why it has brought this application against the Defendants.

The averments in the Applicants Affidavit have not been controverted. The Applicant has shown that it was allocated the plot in issue by the Municipal Council of Lodwar. In the absence to the contrary, the Applicant is entitled to exclusive possession and use of the same to the exclusion of all others. The Applicant has annexed photographs to the Supporting Affidavit . Some structures have been erected on the said plot. The Applicant is entitled to protection of its land. I find that the Applicant has demonstrated that it has a prima facie case with a probability of success. I grant a temporary injunction against the

Respondents in terms of prayer 4 of the Notice of Motion dated 7th February, 2013. The Applicant shall also have costs of this application.

It is so ordered.

Dated, signed and delivered in Open Court on this 6th day of May, 2013.

**E. OBAGA
JUDGE**

In the presence of Mr. Nyamu for Mr. Nyachiro for Applicant Court Clerk: Kassachoon.

**E. OBAGA
JUDGE**

06/05/2013