



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**LAND AND ENVIRONMENT CASE NO. 120 OF 2013**

**ST. JAMES A.C.K KIMILILI (KAMA GROUP) ..... PLAINTIFF**

**VERSUS**

**1. STANLEY BARASA**

**2. RODGERS WEKESA**

**3. HEZRON M. BARASA.....DEFENDANTS/RESPONDENTS**

**RULING**

The applicant by his Notice of Motion dated 29th April 2013 seeks orders;

1. THAT this application be certified as urgent and the same heard on priority basis.
2. THAT an injunction do issue restraining the respondents/Defendants herein by themselves, their agents, servants, and any other person claiming through them from constructing and interfering with the applicant quite enjoyment, possession, occupation of plot No. KIM”B”18 within Kimilili Town pending hearing and determination of this application.
3. THAT an injunction do issue restraining the respondents/defendants herein by themselves, their agents, servants, and any other person claiming through them from constructing and interfering with the applicant quite enjoyment, possession, occupation of plot No. KIM”B”18 within Kimilili Town pending hearing and determination of this suit.
4. THAT the costs of this application be provided for.

The application is supported by the grounds on the face of the application and the two affidavits sworn by the applicants' representative.

The application is opposed and the defendants have sworn an affidavit to oppose the prayers sought. The replying affidavit is sworn by Rodgers Wekesa – the 2nd defendant.

It is the applicant's submission that they were allotted plot No. **KIM”B”18** as per the letter of allotment dated 2nd May 2007. This was subsequently confirmed by a letter dated 7th November 2012. (**annex ACK-2**). The applicant submits further that the defendant entered their plot and began construction on it.

The Respondents on their part submit they were also allotted plot Nos. 60, 61 and 62 Kimilili. They have annexed letters of offer to confirm their ownership. They complied with the terms of the offer by making the requisite payments. Further that plot No. **KIM”B”18** does not exist as the same had been converted into shades and kiosk spaces (paragraph 9 of replying affidavit). They urged the court to vacate the earlier orders.

The question that comes to the mind of the court that there is a

0. Dispute as to physical location of the suit plot.
0. The applicants did not comply with the terms of the letter of offer hence their plot was repossessed.
0. Whether there was any repossession.

This court does not have the expertise to locate plots and must rely on report/evidence of qualified experts to do so. For this to be done, status quo need to be maintained so as not to prejudice either of the parties to the proceedings. Secondly as to whether the applicant's did not comply with the terms of the letter of offer are issue to be determined by adducing evidence and not deal with it at an interlocutory stage of the trial.

Finally whether the applicant's plot was re-possessed or converted into shades and kiosks can also be determined only after full trial. It is therefore clear that the applicant has established the principle of *prima facie* to merit the orders sought.

On the issue of balance of convenience, the Respondents states that through their annex **RW-5**, they have sourced for capital to develop the suit premises. Mr. Wattanga submitted the finance offered to the Respondents is to boost business while Mr. Wafula submits the loan is to be used to develop the plot. I wish to point out that the loan is given to the 2nd defendant only. The 1st and 3rd defendants have not shown any form of financial assistance if any sourced. The proposed plan is in favour of 2nd defendant only although the plan covers plots 60, 61 & 62.

The loan document speaks for itself and it says it is to boost business. Since the construction is yet to begin it infers the business is being carried elsewhere. Therefore granting the orders will not in any way interfere with the 2nd defendants' obligations. The balance of convenience would be to maintain status quo.

Consequently for the reason given in the body of this ruling, I find the application has met the threshold for granting injunctions and proceed to allow it with costs in the cause.

I direct further that this suit be transferred to Kimilili Principal Magistrate court for trial and determination. This is because the said court has pecuniary jurisdiction to hear and determine it. The transfer is also in line with practice directions issued by the Chief Justice pursuant to the provisions of Section 24 of the Environment & Land Court Act.

**RULING DATED, SIGNED, READ AND DELIVERED in open court this 8th day of October 2013.**

**A. OMOLLO**

**JUDGE**