



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 167 OF 2017

LOICE STELLA OKAYA OMOLE.....PLAINTIFF/APPLICANT

VERSUS

BASIL WASHINGTON ACHIENG'A.....1ST DEFENDANT/RESPONDENT

THE COUNTY GOVERNMENT OF KISUMU.....2ND DEFENDANT/RESPONDENT

RULING

1. The Plaintiff moved the Court through the notice of motion dated 15th May 2017, seeking for temporary order of injunction restraining the Defendants “from interfering with plot No. 9341/19 at Maseno Market measuring approximately 0.0465 Hectares or in any other way blocking the entrance to or commencing construction or continuing to erect a structure thereon, pending the hearing and determination of this suit.” The Plaintiff relies on the six grounds marked (i) to (vi) on the face of the application which is also supported by her affidavit sworn on the 15th May 2017.

2. The application is opposed by the 1st Defendant through the replying affidavit sworn by Basil Washington Achieng’a on the 1st September 2017.

3. The Court gave directions on filing and exchanging written submissions on the 26th September 2017. The Counsel for the Plaintiff filed theirs dated 27th October 2017 and when the matter came up for mention on the 22nd February 2018, the Counsel for the 1st Defendant lamented that they are yet to be served with the Plaintiff’s Counsel’s submission. The 1st Defendant’s Counsel informed the Court that they would rely on the replying affidavit filed and today’s date for ruling was fixed.

4. The following are the issues for determination by the Court:

a. Whether the Plaintiff has established a prima facie case with possibility of success for injunction order to issue at this stage.

b. Who pays the costs.

5. The Court has carefully considered the grounds on the notice of motion, the affidavit evidence, the submission by Counsel and come to the following findings;

a. That from the letter of allotment dated 13th December 1991 attached to the Plaintiff’s affidavit and marked LSOO-1, the 2nd Defendant allotted the Plaintiff Plot No. 9341/19, Maseno. The letter of allotment dated 16th July 1998 also annexed to the same affidavit and marked LSOO-2, the Commissioner of Lands granted the Plaintiff Block 2/69, Maseno Township measuring 0.046 Hectares. That further, the minutes from the Works and Town Planning Committee of 26th May 2011 and adopted through the Full Council Meeting of 2nd June 2011, show that the 2nd Defendant had noted that the Plaintiff was the allottee of Plot No. 19 Maseno and had resolved that she and other owners be “assisted to obtain official ownership documents by the Council.”

b. That the Plaintiff has not offered any evidence to show how plot No. 9341/19, Maseno is related to Block 2/69 Maseno Township and the Court will have to wait for the hearing of the main suit to make a determination on that.

c. That the documentary evidence availed by the 1st Defendant and attached to his replying affidavit and marked BWA-6 to 8 confirms that the 1st Defendant was allotted Plot No. 9341/19A Maseno measuring 0.030 Hectares by the 2nd Defendant.

d. That so far there is no evidence availed to confirm with certainty how the plots allotted to the Plaintiff and 1st Defendant by the

2nd Defendant and the Commissioner of Lands are related on their ground positions. That evidence may be availed by the parties, and especially the 2nd Defendant, after they file and serve their pleadings, during the hearing of the main suit.

e. That for the reasons shown above, the Court finds that as both the Plaintiff and 1st Defendant obtained their plots from the 2nd Defendant, it is not possible at this stage to determine whether the plot of the 1st Defendant was initially part of that allotted to the Plaintiff or vice versa and if so, whether that allotment was regularly and procedurally done. The Plaintiff has therefore failed to establish a prima facie case upon which an injunction order could issue at this interlocutory stage.

f. That for reasons set out above, the Plaintiff's notice of motion dated 15th May 2017 is without merit and is dismissed with costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 16TH DAY OF MAY 2018

In the presence of:

Plaintiff Absent

Defendants Absent

Counsel Mr. Obwabuya for Plaintiff

M/s Mwaro for Okoth for 1st Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE