



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.148 of 2015

CHURCHIL OMONDI OWAGA.....PLAINTIFF

VERSUS

CHARLES OTIENO OCHIENG.....1ST DEFENDANT

COUNTY GOVERNMENT OF KISUMU.....2ND DEFENDANT

RULING

1. **Churchill Omondi Owaga**, the Plaintiff, vide notice of motion dated 15th June 2015 seeks for temporary injunction against Charles Otieno **Ochieng** and the **County Government of Kisumu**, the Defendants, restraining them from entering into, trespassing into, cultivating, building structures, interfering with and/ or in any other manner whatsoever dealing with land parcel **Kisumu/Kanyakwar/15026-08** pending the hearing and determination of this suit. The application is based on the twelve (12) grounds marked (a) to (L) on its face and supported by the affidavit of the Plaintiff sworn on the 15th June 2015.

2. The application is opposed by the 2nd Defendant through the grounds of opposition dated 21st July 2015. The 1st Defendant also opposed the application through the replying affidavit sworn on the 25th November 2015.

3. The counsel for the Plaintiff, 1st and 2nd Defendants filed their written submissions on the 1st December 2016, 11th November 2016 and 15th March 2017 respectively.

4. The following are the issues for determination by the court;

a) Whether the Plaintiff has established a prima facie case for temporary injunction to issue at this interlocutory stage.

b) Who pays the costs.

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

a) That from the documentary evidence availed by the Plaintiff, plot **No.L.R.15026-8/Kanyakwar** measuring 0.03 hectares was allocated to Okello O. Samwel vide letter of offer dated 28th September 2007. The letter of offer from Municipal Council of Kisumu required the allottee to signify his acceptance in writing in 14 days in addition to the stipulated amounts of Ksh.17,000/=

being paid.

b) That the Plaintiff subsequently acquired the plot through a sale agreement in 2010 and thereafter commenced development which was however stopped through a notice dated 4th January 2011 from County Council of Kisumu. The notice referred to Migosi Block No.15026/66.

c) That the 1st Defendant claim to plot **66 Migosi** is through purchase from County Council of Kisumu agents in 1998 and has availed a sketch plan (map) showing the ground position of the plot.

d) That the Plaintiff has failed to avail evidence to show the nexus between plot **No.15026-8/Kanyakwar**, which he claims is his, and plot **66 Migosi**, claimed by the 1st Defendant. The 1st Defendant has indicated that his plot is different from the one the Plaintiff claims. The 1st Defendant has further indicated that he has no claim over the Plaintiff's plot.

e) That in view of the foregoing, the court finds that the Plaintiff has failed to establish a prima facie case upon which a temporary injunction could issue.

6. That the Plaintiff's notice of motion dated 15th June 2015 has no merit and is dismissed with costs.

Orders Accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 24TH DAY OF OCTOBER 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Oriel for 1st Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

24/10/2017

24/10/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Mr. Oriel for 1st Defendant the other counsel are absent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

24/10/2017

Court: Ruling dated and delivered in open court in presence of

Mr. Oriel for 1st Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

24/10/2017