



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.77of 2014

ALFRED BUORE NGONGA.....PLAINTIFF

VERSUS

CAPTAIN JOHN OMONDI OCHIENG1ST DEFENDANT

ALFRED OMONDI ADIPO.....2ND DEFENDANT

LEAH AKINYI ADIPO.....3RD DEFENDANT

FRANCIS ADIPO ONDEYO.....4TH DEFENDANT

KISUMU COUNTY GOVERNMENT.....5TH DEFENDANT

RULING

1. Alfred Buore Ngonga, the Plaintiff, seeks vide the notice of motion dated 25th March 2014, to have **Captain John Omondi Ochieng, Alfred Omondi Adipo, Leah Akinyi Adipo, Francis Adipo Ondeyo and Kisumu County Government**, hereinafter referred to as 1st to 5th Defendant respectively, restrained from interfering, disposing, trespassing, building, occupying or in any other way interfering with the plaintiff's leasehold and utilization of land parcel **No.143066** until the suit is heard and determined. The notice of motion is based on three grounds marked (a) to (c) supported by the affidavit of the Plaintiff sworn on the 25th March 2014.

2. The application is opposed by the 1st Defendant through the "replying affidavit sworn on the 2nd November 2015. It is also opposed by the 5th Defendant through the grounds of opposition dated 5th October 2016.

3. The counsel for the Plaintiff and 1st Defendant filed their written submissions dated 24th November 2016 and 11th October 2016 respectively.

4. The issues for determination are as follows:

- a) Whether the Plaintiff has established a prima facie case for temporary injunction to issue at this stage.
- b) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, grounds of opposition, affidavit

evidence, written submissions filed and come to the following conclusions;

a) That the Plaintiff has availed a copy of an allotment letter dated 28th April 1994 showing that he was allotted unsurveyed residential Plot No.B – Kisumu measuring 0.07 hectares. The plaintiff has also availed rates payment documents referring to the plot as **Kanyakwar B/29009**, which is the same parcel reference on the copy of the grant number I.R 143066 dated 14th November 2012.

b) That the Plaintiff's title to the said plot described in (a) above has not been challenged by any of the defendants.

c) That the 1st Defendant's response to the Plaintiff's application is inter alia that his plots are **E/312 and E/313** which have no relationship with Land Parcel No. I.R.143066 which is the suit land.

d) That though the Plaintiff has availed a copy of the Land Survey Plan Number 332368 (Deed plan) for his plot, there is nothing availed to this court to show the nexus between that plot and plots **E/312 and E/313** which the Defendant claims. A report by a licenced Surveyor or the Land Registrar to confirm whether the plots are placed on the same site on the ground would have been of great assistance in view of the 1st Defendant position that he has not occupied plot number I.R.143066.

e) That even though the 1st Defendant's claim to plot E/312 and E/313 has not been challenged by the Plaintiff, the court notes that the sale agreement availed by the 1st Defendant is only in respect of parcel E/313 Kanyakwar Kisumu Municipality. The sale agreement dated 1st August 2011 has Leah Millicent Akinyi a.k.a Selestin Leah Akinyi, as the vendor, while the letter of offer dated 19th November 2010 indicates the allottee as Francis Adipo Ondego, who was not a party to the sale agreement. The 1st Defendant has also availed a letter of offer of the same date in favour of Leah Millicent Akinyi, in respect of plot E/E312 but no sale agreement.

f) That as the Plaintiff has not availed any evidence to confirm whether plot E/312 and E/313 Kanyakwar are situated on the same ground as his plot, the court find he has failed to establish a prima facie case.

6. That the foregoing leads the court to find that the plaintiffs' notice of motion has no merits and is dismissed with costs to 1st and 5th Defendants.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 18TH DAY OF OCTOBER 2017

In presence of;

Plaintiff Absent

Defendants Absent

Counsel M/S Adwar for Plaintiff

Mr. Ogonda for 1st to 4th Defendant

Mr. Rodi for 5th Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/10/2017

18/10/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

M/S Adwar for Plaintiff/Applicant

Mr. Ogondo for 1st to 4th Defendant/Respondents.

Mr. Rodi for 5th Defendant/Respondent.

Court: the ruling dated and delivered in open court in presence of M/S Adwar for Plaintiff, Mr. Ogonda for 1st to 4th Defendants and Mr. Rodi for the 5th Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/10/2017