



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO.255 of 2016**

**SCHOLASTIC ATIENO**

**OYWER.....PLAINTIFF**

**VERSUS**

**KEPHER**

**ODADA.....DEFENDANT**

**RULING**

1. **Scholastica Atieno Oywer**, the Plaintiff, vide notice of motion dated 23<sup>rd</sup> September 2016, seeks for an order of temporary injunction restraining **Kepher Odada**, the Defendant, from “entering, constructing on, alienating,. cultivating, occupying or in any manner interfering with the Plaintiff/Applicant’s quiet possession, ownership and occupation of plot Nos. UNS SG 366 and **UNS SG 367** situated within Mamboleo,” pending the hearing and determination of this suit. The Plaintiff listed ten grounds marked (a) to (j) as the basis of the application which is also supported by her affidavit sworn on the 23<sup>rd</sup> September 2016.

2. The Application is opposed by the Defendant through his replying affidavit filed on 25<sup>th</sup> October 2016.

3. The application came up for hearing on the 18<sup>th</sup> January 2017 when directions on filing and exchanging written submissions were given. That the Defendant’s counsel filed their written submissions dated 4<sup>th</sup> April 2017 but none was filed by counsel for the Plaintiff despite having been given more time.

4. The issues for the court’s determination are as follows;

a) Whether the Plaintiff has established a prima facie case with probability of success for temporary injunction order to issue.

b) Who pays the costs.

5. The court has considered the grounds on the notice of motion, affidavit evidence, submission by counsel for the Defendant and come to the following determination.

a) That the Plaintiff claim to the properties described as **UNS SG 366 and 367** is based on the letters of offer from the Municipal Council of Kisumu that are attached to her affidavit. That though the Plaintiff alleges that the Defendant is the one who trespassed onto the said properties, damaged the structures thereon and commenced construction of a permanent building, that claim has been denied by the Defendant.

b) That the Defendant has availed copies of a grant for land parcel **L.R.No.19110 [L.R. 61970]** issued to Paul Titi, Edith Rob and Luka Kirwa, which has since been transferred to John Muga Ogejo on the 7<sup>th</sup> June 2012. The Defendant has also availed documents from the County Government of Kisumu for payments for among others, development approval for **Kisumu/Kanyakwar/19110**. That though the Defendant has also availed a copy of a site map for the said plot and has deponed that it sits on what the Plaintiff claim as her plots, the court is unable to confirm that the two sets of plots as described by the parties are situated on the same point on the ground. That may need to await the main hearing for a determination to be made upon consideration of all evidence.

c) That the Defendant's deposition that he has no interest on the described plots, and that the constructions being undertaken there is by another person, has not been challenged or controverted by the Plaintiff. That it follows therefore that the Plaintiff has failed to established a prima facie case with a probability of success against the Defendant.

d) That for the reasons set out above, the Plaintiff's notice of motion dated 23<sup>rd</sup> September 2016 is without merit and is dismissed with costs.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**Dated and delivered this 20<sup>TH</sup> day of December 2017**

In presence of;

Plaintiff            Absent

Defendant        Absent

Counsel            M/S Adwar for Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**20/12/2017**

**20/12/2017**

**S.M. Kibunja Judge**

Oyugi/Joane court assistant

M/S Adwar for the Defendant

Order: Ruling dated and delivered in open court in presence of M/S Adwar for the Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**20/12/2017**