

The applicant did not annex any document to show that he met any of those requirements. A letter of allotment is as good as nothing if the allottee does not meet any of the conditions in the letter. The applicant has annexed a clearance certificate issued on 22/2/2013 by municipal council of Kitale. This clearance letter is doubtful because the applicant has also annexed a demand for rates dated 28/2/2013 for Kshs.31,000/=. It will not have been possible for the applicant to be issued with a clearance letter before he paid rates. There was no receipt to show that he ever paid the Kshs. 31,000/= demanded and it is not possible that he paid the rates on or before 22/2/2013 yet a demand for rates issued thereafter shows that he owed the municipality Kshs. 31,000/= as at 28/2/2013.

7. The first respondent has demonstrated that he was allotted the suit land earlier than the applicant. This is at least according to the documents annexed to his replying affidavit. He has been paying rates and met some of the conditions on the allotment letter. The applicant in his further affidavit filed on 11/10/2014 contends that the first respondent may be confusing his plot with that one of his. There is no confusion as to the plot in issue. The part development plan annexed by both the applicant and first respondent shows that they are a replica of each other. The position of the plot is the same. There is therefore no issue of confusion as to the plot in issue.

8. Since the applicant has not demonstrated that he has a prima facie case with probability of success, I now consider whether he will suffer irreparable injury. Both the applicant and first respondent have allotment letters. No lease has been prepared and issued to either of them. The first respondent has only put up a temporary structure on the suit land. He said that this structure has been in place since 2011 when he was allowed to put it up by the municipal Council of Kitale. There is no permanent structure being put up. I do not therefore see which irreparable loss the applicant will suffer if an injunction is not granted. As at August, 2014, the first respondent had sworn an affidavit that his structure which lay on the suit land had been broken into and his belongings stolen. This affidavit was commissioned by Mr Katama Ngeywa who is now acting for the applicant. The first respondent has exhibited a receipt which was issued to him in 2011 allowing him to put up a temporary structure on the land. It cannot therefore be said that the structure was put up in September, 2014.

9. There are two allotment letters in respect of the same parcel of land. Each allottee is claiming that his allotment is the genuine one. It will therefore be impossible at the moment to state which of the documents are genuine and which ones are not genuine. This application must therefore be decided on the balance of convenience. The balance of convenience tilts in favour of the first respondent who has demonstrated that he has been in occupation of the suit land and had even a structure on it. It therefore follows that the applicant's application will not succeed. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 9th day of December, 2014.

E. OBAGA

JUDGE