



Kamau & another v Kalk Investments Limited (Environment & Land Case E201 of 2021) [2023] KEELC 17933 (KLR) (9 June 2023) (Judgment)

Neutral citation: [2023] KEELC 17933 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E201 OF 2021**

AA OMOLLO, J

JUNE 9, 2023

BETWEEN

MICHAEL MWAURA KAMAU 1ST PLAINTIFF

REDEMPTOR NYABOKE MWAURA 2ND PLAINTIFF

AND

KALK INVESTMENTS LIMITED DEFENDANT

JUDGMENT

1. Vide a plaint dated June 7, 2021, the plaintiffs sued the defendant who is described as the leasehold owner of L.R No. 209/4519/2 I.R. No. 35789. The plaintiffs pleaded that the Defendant constructed 3 maisonettes on the suit property for sale which interests were registered on the title and the maisonettes sold to different parties.
2. The plaintiffs pleaded that on various dates they purchased all the three maisonettes from the persons who had purchased from the defendant as follows:
 - i. Maisonette 3 from Cleon Oduor and Alice Oduor in the year 2006.
 - ii. Maisonette 2 from Kanizbanu Rajabali in the year 2010.
 - iii. In 2012, they purchased Maisonette No. 1 from Mohamed Hussein Omar and Latifa Mohamed Hussein Omar.
3. The plaintiffs pleaded that the defendant having constructed and sold the houses on long term leases, his interest in the property was extinguished and the reversionary interest in the property transferred to the new owners. They contend that the long term leases continue to subsist as encumbrances and individual titles on the mother title and therefore being the owners of the all the Maisonettes they should hold the title in their name to enable them enjoy the full benefit of the property.



4. The plaintiffs pray for an order to compel the defendant to execute the transfer in favour of the plaintiffs and in default thereof the Deputy Registrar of the Court be authorized to sign on their behalf. They pray for judgment against the defendant as follows:
 - a. A Declaration that the First and second plaintiffs having purchased all the properties constructed on the suit property are entitled to reversionary interest of the suit property.
 - b. The defendant be and is hereby compelled to transfer the mother title comprised in L.R No. 209/4519/2 I.R. No 36789 to the First and Second plaintiffs herein.
 - c. In default of order (b) above the Deputy Registrar of the Court be duly authorized to execute the transfer in favour of the plaintiffs on behalf of the defendant.
 - d. The costs of this suit.
 - e. Any other others this Court may deem fit to grant.
5. The Defendant did not enter appearance or file any defence. The matter proceeded to formal proof with the 1st plaintiff giving evidence on 6/3/2023. PW stated that land L.R NO. 209/4519/2 was developed with 3 maisonettes which he began buying in the year 2006 and by 2012 he had purchased all the three form the three sets of owners as stated in paragraph 2 herein above.
6. PW avers that he has not received title for the suit property. He added that they have rented out the three maisonettes from the time of purchase to date. PW added that they have also been paying land rates to the City County and rents to the National Governments but in the name of the defendant who is still registered as the owner. The 1st plaintiff contended that they have unsuccessfully traced the owner for effecting the transfer. They prayed that the mother title be availed to enable them get the reversionary interest in the land since no one else has an interest in the land.
7. The plaintiffs produced the following documents in support of their case:
 - a. Transfer of lease dated December 18, 2006 between the plaintiffs and Cleon Oduor & Alice Oduor and registered on August 9, 2007 for Maisonette numbered 3 and entered on the suit title volume D1 folio 784/4267 File DXVI.
 - b. Transfer of lease dated April 15, 2012 between Mohamed Hussein and Latifa Mohamed and the plaintiff. The lease is in respected of maisonette numbered 1 registered on 11th June 2012 as an entry in suit title as Volume D1 Folio 784/4267 File DXVI.
 - c. Transfer of lease dated 30/4/1991 between the defendant and Kanizband Moiz Rajabali for Maisonette numbered 2; registered at the lands office on May 7, 1991.
 - d. Copy of certificate of title I.R. No. 36789 L.R No. 209/4519/2 in the name of the defendant and showing the entries for the leases in respect of Maisonette Numbers 1 – 3.
8. The Plaintiffs have therefore demonstrated their interest in the property. They have also demonstrated that having sold all the houses developed on the land, the defendant does not have any further interest on the land besides the title reading its name. It is thus imperative that the plaintiffs be granted full control by having the mother title being registered in their name. There is nothing presented to this court to refuse their claim.
9. Consequently, I enter judgment for the plaintiffs as prayed save that they will bear their costs of the suit.

JUDGMENT, DATED, SIGNED & DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE 2023.



A. OMOLLO
JUDGE

