



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 254 OF 2000

JOB KIPNANDI CHEBON.....PLAINTIFF/APPLICANT

AND

MAKANA TRANSPORTERS.....1ST DEFENDANT/ RESPONDENT

TRUST BANK LIMITED2ND DEFENDANT/RESPONDENT

GARAM INVETMENT.....3RD DEFENDANT/RESPONDENT

M.K. MWANGI & MARY WANGUI KIRUMBI T/A

FANITA COMMERCIAL AGENCIES.....4TH DEFENDANT/RESPONDENT

BETWEEN

GEOFFERY MAKANA ASANYO.....1ST THIRD PARTY/RESPONDENT

TABITHA MORAA ASANYO.....2ND THIRD PARTY/RESPONDENT

COMMISSIONER OF LANDS.....3RD THIRD PARTY/RESPONDENT

RULING

BACKGROUND OF THE SUIT

1. The plaintiff filed dated 19th April 2013 seeking the following orders:-

- a. *The court be pleased to assess the amount of indemnity awardable to the plaintiff as per the judgment of the court delivered on 27th January 2012.*
- b. *The court be pleased to issue such directions as appropriate towards such assessment.*
- c. *Costs be provided for.*

2. The application was filed following a judgment delivered in a suit filed by the plaintiff against the defendants herein by plaint dated 24th May 2000 where the plaintiff sought the following orders:-

- a. *A declaration that the plaintiff is the registered proprietor of the leasehold interest over all the parcel of land known as Nakuru Municipality block 16/164 measuring 2.010 ha*
- b. *A declaration that the 1st defendant certificate of lease over the plaintiff's property is invalid, null, and void and ought to be canceled.*

c. A declaration that the 1st defendant had no valid title over the plaintiff's land capable of creating a lawful charge in favor of the 2nd defendant.

d. A declaration that the 2nd defendant had no valid and lawful statutory power of sale over the plaintiff's property and the purported public auction conducted by the 3rd defendant was invalid, null, and void.

e. A declaration that the 1st defendant had no valid title which could be lawfully transferred to the 4th defendant, who cannot be said to be an innocent purchaser for value.

f. A perpetual injunction to restrain the 1st, 2nd, 3rd, and 4th defendants jointly and severally, their servants, agents and/or employee from;

i. Trespassing, entering, occupying, erecting illegal structures, sub-dividing, selling, or interfering with the plaintiff's quiet possession of the property.

ii. Transferring the suit property from the 1st defendant to the 4th defendant or from the 4th defendant to the third party.

g. General damages

h. Exemplary and /or punitive and or aggravated damages

i. Costs and interest.

3. From the plaint, Plaintiff was allotted a parcel of land known as Uns. Industrial Plot Nakuru Municipality by the commissioner of lands vide a letter of allotment dated 22nd March 1990 upon payment of the requisite charges of Kshs. 304,110.00. He was registered as the owner of Nakuru Municipality/Block 16/ 164 and the lease issued on 30th September 1991.

4. On 10th November 1994, the commissioner of lands granted a lease over the same property to the 1st defendant, and subsequently, a lease was issued on 4th April 1996. The plaintiff stated that when the lease was granted, he took possession and fenced the property and was in quiet possession until the year 1998 when strangers invaded the property with the intention of subdividing; and when he sought an explanation from the commissioner of lands, an explanation tendered was that due to some omission, the property was allocated to the 1st defendant.

5. The commissioner wrote a letter to the 1st defendant requiring him to surrender the title to the property in exchange for another parcel which he failed to comply. In the year 2000, other strangers moved into the property which prompted the plaintiff to conduct a search and upon search, he confirmed the property was registered in his name. He conducted investigations and realized that the 1st defendant secured a loan using the title to the property as collateral and defaulted in repayment of the sum of Kshs. 3 Million advanced to by the 2nd defendant, and the 2nd defendant instructed Garam Investments to sell the property.

6. The 2nd and 3rd defendants filed their counter claim and a third-party notice enjoining the third party in the suit.

7. Justice W. Ouko delivered judgment on 27th January 2012 where he entered judgment against the commissioner of lands for indemnity under **Sections 114 and 115 of the Registered Land Act** for failure to controvert the allegations against him in the plaint. Costs were also awarded to all parties who participated in the suit to be borne by the commissioner of lands.

8. The application is premised on the grounds that judgment herein was delivered on 27th January 2012, and the claim against the defendants was dismissed and judgment was entered against the commissioner of lands for indemnity; the plaintiff seeks the amount of indemnity to be assessed by this court.

9. The application is supported by the affidavit of Job Kipnandi Chebon who reiterates the grounds of the application. He averred that upon the commissioner of lands being served, no response was filed. On 4th February 2021, Ms. Masinde who was holding a brief for Ms. Okelo for the commissioner of lands sought and was granted 14 days to file a response to the application and the court set aside the earlier orders allowing the application.

10. Directions were taken that the matter proceed by way of written submissions. The commissioner of lands despite being served failed to file submissions.

PLAINTIFF SUBMISSIONS

11. The applicant/plaintiff submitted that as per the judgment of the court, the plaintiff was entitled to indemnity by the commissioner of lands; a valuation report has been conducted by Progressive Realtors Limited who valued the property at Kshs. 60 Million. The applicant however submitted that according to their opinion, that the report did not present a fair market value of the property and cited the case of **Joseph Macharia Nderitu vs. Real Insurance Company limited (2014) E KLR**.

12. The applicant further submitted that the plaintiff lost money in two aspects; one is the fees necessary for the processing of the title to the

suit land and the value of the land he owned which he lost ownership due to the fault of the commissioner of lands and submitted a figure of Kshs. 60,304,111/= being the current market value plus the costs incurred in acquiring the title to the property will be adequate to compensate the plaintiff. Plaintiff also prayed for costs of this suit.

ANALYSIS AND DETERMINATION

13. I have considered the averments herein and submissions filed. Progressive Realtors Limited filed a report dated 10th December 2012; the assessment was done on 7th December 2012 in respect to the property known as Nakuru/Municipality block 16/164 approximately measuring 4.966 acres located in Nakuru County at Kiti Area. The report indicate that the property has no physical improvements. From the valuation report, the market value is Kshs. 60,000,000/= . The valuation report acts as guidance as to the market value of the property. The valuation report filed herein has not been challenged by any other independent valuation report .I have no reason to consider any other amount other than the Market value indicated in the valuation report filed in court.

14. From the foregoing I allow compensation to the tune of kshs 60,000,000 plus kshs 304,111 being the amount incurred by the applicant for processing title deed in respect to the plot herein.

15. FINAL ORDERS

1) Amount of indemnity to be paid by the 3rd defendant to the plaintiff is assessed at kshs 60,304,111 (sixty million three hundred thousand one hundred and eleven shillings only).

2) Costs of this suit to the applicant.

RULING dated, signed and delivered via zoom at **Nakuru**

This **21st** day of **October**, 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Jenifer - Court Assistant

Ms. Chetalam for Plaintiff/Applicant

No appearance for Defendants/Respondents