



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HIGH COURT CENTRAL**

**ELC NO 424 OF 2009**

**CIBIYA FARM HOLDINGS  
LIMITED.....PLAINTIFF**

**VERSUS**

**THE SCHOOL BOARD OF OUR LADY OF PEACE KIELTY/TRUST PRIMARY  
SCHOOL....1ST DEFENDANT**

**THE CITY COUNCIL OF NAIROBI .....2ND  
DEFENDANT**

**J U D G M E N T**

This suit was heard on 2nd February, 2016. The date had been fixed by the Hon. Justice Mutungi, Judge, on 26th May, 2015 at Milimani /Nairobi. The hearing was conducted ex-parte after the Defendants failed to turn up in Court.

In his amended plaint, the Plaintiff avers as follows:-

- 1. The Plaintiff is a limited liability company incorporated and registered in Nairobi, Kenya. Its address for the purposes of this suit is care of M/S Aming'a Opiyo, Masese and Co. Advocates, Shankardass House, 3rd Floor, Moi Avenue, Nairobi.***
- 2. The 1st Defendant is the School of a Primary School (sic) an educational establishment registered in Kenya and carrying on business in the name and style of Our Lady of Peace Kielty Trust Primary School P.O Box 24599-00502 Karen, Nairobi. ( Their address of service for the purposes of this suit shall be through the Plaintiff's advocates' office).***
- 3. The 2nd Defendant is the City Council of Nairobi. (Their address of service for the purposes of this shall be through the Plaintiff's advocates' office).***
- 4. At all material times relevant to this suit, the Plaintiff is the legal owner as tenant in common in fee simple of a piece of land being plot Number L.R 11377/2 situated at Karen in the City of Nairobi.***
- 5. The Plaintiff became the legal owner of the suit property pursuant to a lease agreement for value on 24th April, 2009 between itself and the 2nd Defendant the City Council of Nairobi the***

*registered proprietor from the President of the Republic of Kenya for a period of Ninety Nine years from the First day of November One Thousand Nine Hundred and Eight One.*

- 6. The 2nd Defendant upon executing the aforementioned lease agreement in favour of the Plaintiff' is under a duty to facilitate the transfer of title of the suit property into the name of the Plaintiff.*
- 7. The purchase price of the suit property was fully paid by the Plaintiff to the 2nd Defendant on the understanding that the 2nd Defendant was making all efforts possible to obtain title documents to the suit property.*
- 8. The Plaintiff has taken the requisite steps to have the suit land registered into its name by having the stamp duty duly paid and is only awaiting the conveyance to be complete and have the title deed's name effected in its favour.*
- 9. Notwithstanding the foregoing and in flagrant breach of the lease agreement the 2nd Defendant failed to furnish the title documents to the Plaintiff thereby frustrating the completion of the said lease agreement and had instead written a letter dated 28th August, 2008 to the Commissioner of Lands advising that registration of process in favour of the Plaintiff be stopped to the detriment of the plaintiff.*

#### **PARTICULARS OF BREACH**

- a. Failure to procure , obtain the title documents of the property in favour of the Plaintiff.*
  - b. Failing to procure the requisite consent to transfer the suit property into the name of the Plaintiff.*
  - c. Reneging on the Sale Agreement by requesting the Commissioner of Lands to stop processing title in favour of the Plaintiff vide letter dated 28th August, 2009.*
  - d. Allocating the suit property to the 1st Defendant without authority and/or consent to the Plaintiff.*
- 10. The 1st Defendant without notice to the Plaintiff and for unknown reasons has trespassed into the Plaintiff's property and is hurriedly digging the place in readiness for construction of permanent buildings to the detriment of the Plaintiff's interest in the said suit land rendering this action necessary.*
- 11. The purported allocation of the suit property to the 1st Defendant by the 2nd Defendant is null and void in law in lieu of the Sale Agreement in force between the Plaintiff and the 2nd Defendant who is estopped in law from reneging on the same, in any manner.*
  - 12. The Plaintiff further claims general and special damages against the Defendants for the interference with the plaintiff's quiet possession and enjoyment of all the Plaintiff's benefit in the suit land.*
  - 13. The Plaintiff prays for a permanent injunction against the Defendants restraining the Defendants from asserting any claims over the suit land.*
  - 14. By reasons of the matters pleaded in the paragraphs hereinabove the Plaintiff has suffered and will continue to suffer loss and damage and claims compensation and damages from the Defendants.*
  - 15. There is no other suit pending and there have been no previous proceedings in any Court between the Plaintiff and the Defendants over the same subject matter.*
  - 16. The cause of action arose in Nairobi within the jurisdiction of this Honourable Court.*

For the above reasons the Plaintiff prayed for Judgment against the Defendants jointly and severally for:-

***(a) An order of injunction restraining the 1st and 2nd Defendants by themselves agents, workmen or anybody purporting to act under their instructions from using, entering into, occupying, constructing, alienating, destroying or removing any item or in any manner interfering with the Plaintiff's quiet enjoyment of Plot Number 11377/2 Karen, Nairobi or dealing in any way or transferring title of the property known as L.R 11377/2 Karen, Nairobi to any other party or any person apart from the Plaintiff herein, or using the same in any manner whatsoever or evicting the Plaintiff from the suit land or interfering with the Plaintiff's access to or egress from the suit land until the final determination of this suit.***

***(b) A declaratory order that the Plaintiff is a bonafide purchaser of property known as L.R 11377/2 Karen, Nairobi.***

***(c) An order directing the 2nd Defendant to transfer and sign all necessary documents to effect registration of land parcel Number L.R 11377/2 Karen, Nairobi into the Plaintiff's name failure to which the Court's Registrar to effect the same.***

***(d) A declaration that the 2nd Defendant's letter of 28th August, 2009 has no legal effect and therefore the Commissioner of Lands is bound by its contents.***

***(e) General damages for trespass.***

***(f) Cost of this suit and interest at Court rates.***

***(g) Any other relief that this Honourable Court may deem fit and just to grant.***

In his evidence, the Plaintiff told the Court that he was a director and a shareholder of CIBIYA FARM HOLDINGS. He testified that he had brought this suit to Court on behalf of CIBIYA FARM HOLDINGS LIMITED.

He asked the Court to adopt his witness statement dated 25/01/2015 and filed on 26/01/2015 as his evidence.

The Plaintiff produced the following exhibits:

- 1. Copy of Lease Agreement made between City Council of Nairobi and Cibiya Farm Holdings Limited dated 24th April,2009.***
- 2. Copy of Stamp Duty Declaration, Assessment and pay-in-slip dated 24th April,2009.***
- 3. Copy of Customer Transaction Voucher dated 24th April, 2009.***
- 4. Copy of the Deed plan No 297831.***
- 5. Copy of a letter dated 24th August, 2009 from City Council of Nairobi to the Commissioner of Lands.***

I find that the Plaintiff has satisfactorily proved his case against the defendants. The Defendants have failed to prove their respective cases. They have failed to controvert the Plaintiff's assertions. In the circumstances, the plaintiff wins this case.

I grant the Plaintiff's prayers for judgment against the Defendants jointly and severally in the following terms:-

***(a) An order of injunction is granted restraining the 1st and 2nd Defendants by themselves***

*agents, workmen or anybody purporting to act under their instructions from using, entering into, occupying, constructing, alienating, destroying or removing any item or in any manner interfering with the Plaintiff's quiet enjoyment of Plot Number 11377/2 Karen, Nairobi or dealing in any way or transferring title of the property known as L.R 11377/2 Karen, Nairobi to any other party or any person apart from the Plaintiff herein, or using the same in any manner whatsoever or evicting the Plaintiff from the suit land or interfering with the Plaintiff's access to or egress from the suit land.*

*(b) A declaratory order is granted that the Plaintiff is a bonafide purchaser of property known as L.R.11377/2 Karen, Nairobi.*

*(c) An order is granted directing the 2nd Defendant to transfer and sign all necessary documents to effect registration of land parcel Number L.R. 11377/2 Karen, Nairobi into the Plaintiff 's name failure to which the Court's Registrar to effect the same.*

*(d) A declaration is issued that the 2nd Defendant's letter of 28th August, 2009 has no legal effect and therefore the Commissioner of Lands is bound by its contents.*

*(e) General damages are awarded to the Plaintiff for trespass in the sum of Kshs 1,600,000/= and interest thereon is payable at Court rates from the date of delivery of this Judgment.*

*(f) Costs are awarded to the Plaintiff and interest at Court rates is payable from the date of delivery of this Judgment.*

*It is so ordered.*

*Delivered in Open Court at Meru this 21st day of March, 2016 in the presence of:*

CC: Daniel /Lilian

Owino Opiyo for the plaintiff.

**P. M. NJOROGE**

**JUDGE**