



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC CASE NO.2 OF 2021**

**ASPIRE LIMITED.....PLAINTIFF**

**=VERSUS=**

**ZEDKA TECHNICAL SERVICES LIMITED.....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR UASIN GISHU.....2<sup>ND</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT:**

1. By a plaint dated 13<sup>th</sup> January, 2021, the Plaintiff filed this suit against the Defendants seeking the following reliefs: -

- a) A declaration that the Plaintiff is the ultimate owner and proprietor of all that parcel of land known as Eldoret Municipality/Block 8/527.
- b) An order directed to the second and third Defendants that the registration and transfer of title to the first Defendant as the proprietor of land parcel number Eldoret Municipality/Block 8/527 be cancelled. Repealed, annulled and or revoked.
- c) A permanent injunction restraining the Defendants by themselves, their agents, servants from interfering with, transferring, offering for sale or dealing in any way with land parcel number Eldoret Municipality/Block 8/527.
- d) Any other or further relief this court deems fit and just to grant.
- e) Cost of this suit.

2. The 1<sup>st</sup> Defendant was duly served through substituted service but it neither entered appearance nor filed defence. The Attorney General who appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants participated in the initial stages in this case but lost interest midway. The Attorney General did not file any defence to the Plaintiffs claim. The hearing therefore proceeded ex-parte against the Defendants.

3. One of the directors of the Plaintiff company testified that on 20<sup>th</sup> November, 2006, the Plaintiff and one John Rotich Limo who was the registered owner of LR No. Eldoret Municipality Block 8/527 (suit property) entered into a sale agreement in which the vendor agreed to sell the suit property to the Plaintiff at a consideration of 2,600,000/=

4. The Plaintiff paid Kshs 1,000,000/= upon execution of the sale agreement. The suit property was transferred to the Plaintiff after which the balance of the purchase price was paid to the vendor. The purchaser took possession of the suit property. Title was processed in favour of the Plaintiff and was issued on 11<sup>th</sup> December, 2006.

5. The County Government of Uasin Gishu began putting up a walkway next to the suit property. The Plaintiff's directors sent their people to go and fence the suit property. As the fencing started, someone came up claiming that he was the owner of the suit property. This aroused the directors of the Plaintiff who went to the Land Registry where they were informed that though there were no documents to suggest that the suit property had been transferred from the Plaintiff to the 1<sup>st</sup> Defendant, a title in respect of the suit property had been issued in favour of the 1<sup>st</sup> Defendant.

6. The directors of the Plaintiff conducted an official search on 12<sup>th</sup> January, 2021 which showed that the suit property was registered in the name of the 1<sup>st</sup> Defendant. This is the time the directors of the Plaintiff decided to file this suit.

7. The Plaintiff was directed to file written submissions. The Plaintiff filed submissions on 23<sup>rd</sup> November, 2021. I have gone through the evidence of the Plaintiff's director as well as the submissions. The only issue for determination is whether the Plaintiff has proved its case to the required standards.

8. The Plaintiff produced a sale agreement dated 20<sup>th</sup> November as exhibit 1. The Plaintiff also produce a transfer of lease as exhibit 2. A lease was issued in favour of the Plaintiff and certificate of lease issued which was produced as exhibit 3. Stamp duty of Kshs 104,000/= was paid as shown in exhibit 4. The balance of the purchase price was paid vide a banker's cheque as confirmed by the Plaintiff's advocates letter of 16<sup>th</sup> January, 2007 (exhibit 5). The Plaintiffs advocate wrote to the Plaintiff asking that they take possession through letter of 16<sup>th</sup> January, 2017 (exhibit 6).

9. The Plaintiff produced a search conducted on 12<sup>th</sup> January, 2021 which showed that the suit property was in the name of the 1<sup>st</sup> Defendant. The search was produced as exhibit 7. On 2<sup>nd</sup> April, 2014, the Plaintiff's directors conducted a search which showed that the Plaintiff was registered as owner of the suit property. This search was produced as exhibit 8.

10. The Plaintiff's evidence was not controverted. All the particulars of fraud listed in the Plaintiff's claim were proved to the required standards. For instance, the Plaintiff had done a search on 2<sup>nd</sup> April, 2014 which showed that it was the registered owner. The 1<sup>st</sup> Defendant was purportedly issued with title on 6/8/2013. This could not be possible and it points to the fact that the date was backdated.

11. There were also no transfer documents in the file but title had been issued to the 1<sup>st</sup> Defendant. The original title is with the Plaintiff and it is not understandable how the 1<sup>st</sup> Defendant obtained its title. This mystery would have been unraveled by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants but they conveniently chose not to participate in this case.

12. In the case of *Arthi Highway Developers Limited -Vs- West End Butchery Limited & 6 others (2015) eKLR*, the High Court had found that 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had fraudulently acquired title in respect of a property owned by the Appellant and proceeded to sell portions to third parties. The High Court cancelled those fraudulent titles as the original owner was in possession of the title. On appeal, the court of Appeal agreed with the judgment of the High Court holding that there was fraud involved in acquisition of the cancelled title as the original owner still had its title. The Commissioner of Lands was blamed for complicity in the fraud.

13. This is exactly what happened in the present case. The 1<sup>st</sup> Defendant could not obtain title to the property while the true owner had his original title. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had no explanation as to how this happened under watch of the 2<sup>nd</sup> Defendant. I therefore find that the Plaintiff has proved its case on a balance of probabilities. I enter judgment for the Plaintiff against the Defendants as follows:-

1. A declaration is hereby made that the Plaintiff is the owner of LR. No Eldoret Municipality/Block/8/527.
2. The 2<sup>nd</sup> Defendant is directed to cancel the fraudulent title in favour of the 1<sup>st</sup> Defendant and restore the Plaintiff's title in its records.
3. A permanent injunction is hereby issued restraining the 1<sup>st</sup> Defendant, its agents and servants from interfering with the Plaintiff's parcel known as Eldoret Municipality/Block 8/527.
4. The costs of this suit shall be borne by the Defendants jointly and severally.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF APRIL 2022.**

**E. OBAGA**

**JUDGE**

In the virtual presence of;

Ms. Wambani for Plaintiff

Court Assistant -Albert

**E. OBAGA**

**JUDGE**

**20<sup>TH</sup> APRIL, 2022**