



**REPUBLIC OF KENYA**

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

**MISC. APPL. CASE NO. 181 OF 1998**

**NAIROBI CITY COUNCIL.....PLAINTIFF**

**VERSUS**

**CHHAGAL LALA DIVARI w/o CHHAGAN LALA ..... DEFENDANT**

**DABER ENTERPRISES LIMITED.....APPLICANT/PURCHASER**

**THE COMMISSIONER OF LANDS.....INTERESTED PARTY**

**RULING**

Coming before me for determination is the Originating Summons dated 20<sup>th</sup> April 2013 in which the Applicant claims to be entitled to a renewal and extension of the Lease in respect of a parcel of land known as L.R. No. 209/2389/58 (hereinafter referred to as the "Suit Property") as well as registration of the lease in its name by virtue of orders issued by this Honorable Court on 24<sup>th</sup> June 1998 and seeks for an order that the Commissioner of Lands be compelled to renew and extend the Lease in respect of the Suit Property and to register the same in the name of Daber Enterprises Limited. The Applicant also seeks the costs of this application.

The application is premised upon the grounds set out on the face of it together with the Supporting Affidavit of Bernard Mwangi sworn on 24<sup>th</sup> April 2013 in which he swore that he is a director of the Applicant and that by an advertisement carried in the East African Standard Newspaper of 26<sup>th</sup> October 1996, Capital Auctioneers gave a Notification of Sale of the Suit Property belonging to the Defendants pursuant to warrants of attachment and sale issued in execution of a decree passed by the Subordinate Court in Nairobi RM.CC No. 188 of 2006. He further stated that by a public auction of the Suit Property conducted on 22<sup>nd</sup> November 1996, the Applicant was declared the highest bidder for Kshs. 2 million. He further swore that on 1<sup>st</sup> July 1997, the Plaintiff obtained orders in the said suit confirming that the Applicant became a purchaser for value of the Suit Property and that the title issued to the Defendants be vested in the Applicant absolutely and free from any encumbrances registered therein. He further swore that on 24<sup>th</sup> June 1998, this Honorable court, pursuant to the application by the Applicant herein dated 9<sup>th</sup> January 1998, granted an order that the Suit Property together with all the buildings and improvements thereon be vested in the Applicant. He further stated that the Applicant subsequently commenced the process of registering the said orders at the Lands Office so as to have the title to the Suit Property registered in its name. He further stated that the Lands Office could not trace its file in respect of the Suit Property thereby making it impossible for the Applicant to complete the registration process. He further stated that by a letter dated 31<sup>st</sup> January 2011, the Applicant requested the Plaintiff for an extension of the lease over the Suit Property and that by a Letter dated 17<sup>th</sup> February 2011, the Plaintiff indicated that it had no objection to the extension upon payment by the Applicant of Kshs. 60,000/-. He further stated that the Applicant has been paying land rates to the Plaintiff for the Suit Property and that when the file for the Suit Property at the Lands Office resurfaced in October 2011, the Applicant went ahead to clear all outstanding land rents. He further stated that the Applicant then proceeded to apply for registration of the said Vesting Order but before the process could be completed it turned out that the lease had since expired with the result that the Commissioner of Lands failed to act on the Applicant's request for extension of lease. He further stated that there are no compelling reasons why the lease in respect of the Suit Property should not be renewed, extended and the same registered in the name of the Applicant.

In response to that application, the Plaintiff stated that it has no objection to extension of the lease in respect of the Suit Property in favour of the Applicant who is the *bona fide* purchaser for value thereof. The Interested Party has, despite being duly served with this application, failed to file any response.

The main issue for determination is whether the Commissioner for Lands can be compelled to renew and extend the expired lease in respect of the Suit Property and to register the same in the name of the Applicant. In addressing that issue, I wish to rely on **Section 9(2)(c)(ii)** of the **Land Act** which provides as follows:

***“private land may be converted to public land by reversion of leasehold interest to Government after the expiry of a lease”***

I also wish to cite the decision of Osiemo, J. in the case of *Charles Mwangi Kagonia versus Dharj D. Popat & Another (2006) eKLR* in which he stated as follows:

***“Once the 99 years lease between the Government and the defendant expired and he did not apply for extension which must be granted and executed by the lessee and lessor and registered before the expiry of the then current term the interest of the lessee ceases and the land becomes available for allocation by the Commissioner of Land who is at liberty to allocate the same to any deserving applicant following the laid down procedures.”***

From the information supplied to this court, it is not evident that the Applicant sought to know what length of leasehold interest he was obtaining in respect of the Suit Property when he proceeded to purchase the same at the public auction. None of the pleadings disclose this information. It may therefore be that the Applicant did not concern himself with this very important information. It has been disclosed to this court that it is upon the resurfacing of the file in respect of the Suit Property at the Lands Office that it became apparent that the lease from the Government had expired. Even in making the instant application, the Applicant has not deemed it necessary to inform the court the length of the expired lease.

My study of the applicable law did not disclose any specific legal provision conferring upon the Applicant the right to the extension of the lease over the Suit Property. The legal provision cited above indicates that where a leasehold interest expires, the land reverts to public land. It is therefore my finding that this court cannot compel the Commissioner of Lands to extend the Applicant's expired lease.

Arising from the foregoing, the application is hereby dismissed. No order as to costs.

**SIGNED AND DELIVERED AT NAIROBI THIS 1<sup>st</sup> DAY OF November 2013**

**MARY M. GITUMBI**

**JUDGE**