



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 15 of 2002

RAMESH CHANDRA PRANSHAKER JOSHI.....1ST PLAINTIFF
RANANA RAMESH CHANDRA JOSHI.....2ND PLAINTIFF
VERSUS
JADVA LALJI PATEL1ST DEFENDANT
GOPAL RAMJI KANJI2ND DEFENDANT
T/A SUNRISE HOME REPAIRS
JOHN GAKUO3RD DEFENDANT

J U D G M E N T

1. The Plaintiffs herein, Ramesh Chandra Pranshaker Joshi and Ranana Ramesh Chandra Joshi commenced this suit by way of a plaint dated 17/04/2001 and filed in court on 08/01/2002. The Plaintiffs pray for judgment in their favour for the following **ORDERS:-**
 1. *A declaration that the 2nd allocation of the plot No. I.R. No.34466 L.R. 209/9330 to the 3rd Defendant by the Commissioner of Lands is null and void ab initio and the subsequent transfer by the 3rd Defendant to the 1st and 2nd Defendants is illegal.*
 2. *The 1st and 2nd Defendants be evicted from the suit premises.*
 3. *The court do issue an order of temporary injunction against the 1st and 2nd Defendants or their agents or servants from interfering with the suit premises in any other manner until this suit is heard and determined.*
 4. *An order for permanent injunction be issued against the 1st and 2nd Defendants or their servants or agents from interfering with the suit premises in any manner whatsoever.*
 5. *The costs of this suit be to the Plaintiffs and interest at court rates.*
 6. *Any other relief that this Honourable Court deems fit and just to grant.*
2. The Plaintiffs describe themselves simply as male and female adult Kenyans of sound mind living and working for gain in Canada while the 1st and 2nd Defendants are described as male adult Kenyans doing business in the name and style of Sunrise Home Repairs. The 3rd Defendant is described as a male adult Kenyan working for gain and residing at Nyamira.
3. The Plaintiffs aver that the Commissioner of Lands allocated to them the parcel of land known as IR 34466-L.R. No. 209/93330 (the suit land) on 04/03/1990 for a period of 99 years with effect from 01/08/1979. The

Plaintiffs say that the grant was registered as IR 34466/1 located at Parklands 1st Avenue Nairobi City measuring 0.1000 of a hectare or thereabouts; and that from 04/03/1980 up to the date of filing suit the Plaintiffs faithfully paid the rates and rent for the suit land.

4. The Plaintiffs claim that in or about September 2001, they discovered that the Commissioner of Lands had allocated the suit land to the 3rd Defendant vide allotment letter dated 07/09/1995 and that 3rd Defendant turned sold the suit land to the 1st and 2nd Defendants for Kshs.2,000,000/= and a new lease given for 99 years from 01/09/1995. The Plaintiffs say that as at the time of the new allocation to the 3rd Defendant, they were still holding and in possession of their original grant issued to them on 04/03/1980 and effective from 01/08/1979.
5. It is the Plaintiff's case that the 2nd allocation of the suit land to the 3rd Defendant and subsequent transfer to the 1st and 2nd Defendants was unlawful, irregular improper and null and void ab initio; and that the Commissioner of Lands acted contrary to the provisions of the Land Acquisition Act. The Plaintiffs further aver that they are apprehensive that the 1st and 2nd Defendants will sell the suit land to other unsuspecting third parties since the said 1st and 2nd Defendants have already entered the suit land and started constructing a perimeter wall around the same. These are the Plaintiffs' reasons for this suit.
6. The 1st and 2nd Defendants filed their Statement of Defence on 29/03/2004. The 1st and 2nd Defendants claim to have bought the suit land from the 3rd Defendant vide an Agreement of Sale dated 28/10/1995. The 1st and 2nd Defendants also aver that they were subsequently issued with a Grant in respect of the suit land and they claim that the grant issued to them is valid and sufficient to confer title in the suit land to the 1st and 2nd Defendants. The 1st and 2nd Defendants deny that the Plaintiffs were in possession of a valid grant in respect of the suit land when they (1st and 2nd Defendants) bought the suit from the 3rd Defendant. The 1st and 2nd Defendants also deny that the transfer of the suit land to themselves by the 3rd Defendant was unlawful, irregular, improper and null and void ab initio. The 1st and 2nd Defendants have asked the court to dismiss the Plaintiffs' suit with costs.
7. The 3rd Defendant in this case was never served with summons to Enter Appearance. When the parties appeared before me on 28/10/2009 for hearing, Mr. Masika of Manthi Masika & Co. Advocates successfully applied to withdraw the suit against the said 3rd Defendant. The Plaintiffs proceeded with their case against the 1st and 2nd Defendants only.
8. Evidence in support of the Plaintiff's case was given by Mr. Kirit Kumar Dave Hariprasad as PW1. PW1 testified in the case on the strength of a Power of Attorney donated to him by Rameshchandra Pranshaker Joshi dated 25/11/2008 and produced as PExhibit 1. PW1 reiterated the averments contained in the Plaintiffs' plaint. He produced the original Letter of Allotment dated 27/07/1979 and the acceptance letter dated 01/08/1979 as PExhibits 2 and 3 respectively. PW1 also produced payment receipts in respect of the charges payable to the Commissioner of Lands vide PExhibits 4(a) and (b) and he confirmed that the title deed was issued to the Plaintiffs on 03/03/1980 as per PExhibit 5. PW1 also produced as PExhibit 6 a bundle of receipts confirming demands by and payment of land rates and rent by the Plaintiffs to the City Council of Nairobi.
9. PW1 also stated that before the Plaintiffs developed the suit land, they migrated to Canada and that he (PW1) was mandated to look after the suit land on behalf of the Plaintiffs. PW1 also stated that when he went to the Lands

Office in or about September 2001 with the intention of paying Land Rent, he discovered that the Rent Card in respect of the suit land was missing. It was after that that PW1 said he discovered the suit land had been allocated to the 3rd Defendant by a Letter of Allotment dated 7/09/1995 – see PExhibit 9 – under Ref. No.100389/29 in respect of LR No.9330 – Parklands-Nairobi.

10. PW1 testified further that the allotment of the suit land to the 3rd Defendant who in turn sold the suit land to the 1st and 2nd Defendants was unlawful illegal, irregular and improper. PW1 said that his attempts to get the Green Card in respect of the suit land have been fruitless. PW1 prays that judgment be entered for the Plaintiffs as prayed and the allotment to the 1st and 2nd Defendants be nullified.
11. The 1st and 2nd Defendants, though duly served with the hearing notice, did not appear at the hearing to give evidence in support of their claims against the Plaintiffs.
12. Learned Counsel for the Plaintiffs also made final written submissions and cited **Nairobi HCCC No. 73 of 2000- H.H. Dr. Syedne Mohammed Burhannuddin Saheb & 2 Others –vs- Benja Properties Ltd. and 2 Others.** The facts in that case were very similar to the facts in the instant case where there was double allocation of the suit property. It transpired in that case that while the original grant was running, some strangers acquired a new title deed to the same suit property and purported to claim ownership of the suit property. Like in the present case, the Plaintiffs in the **Saheb case** had the possession, control and ownership of the suit property. The Defendants in that case also based their claim on an allotment letter.
13. Based on the **Saheb case** (above) learned counsel for the Plaintiffs submitted this Honourable Court to find in favour of the Plaintiffs on the following grounds:-
 - (i) *that this Honourable Court should consider and bring into operation the disclaimer in the Letter of Allotment issued to Mr. John Gakuo on 07/09/1995*
 - (ii) *that the 2nd allocation of the suit land to John Gakuo was done in contravention of the provisions of section 3(a) of the Government Lands Act (GLA) subject to which the Letter of Allotment to Mr. Gakuo was issued.*
14. I have now carefully considered the facts of this case, the evidence given by the Plaintiffs, the submissions made on behalf of the Plaintiffs and the cited case law. After considering the above, I do find that the Plaintiff's evidence in this matter has not been shaken by the Statement of defence of the 1st and 2nd Defendants. It is as clear as day that this is a case of double allocation of the suit land.
15. From the evidence on record, the Plaintiffs herein acquired title to the suit land way back in 1979 and have been in possession and control of the same land until in or about September 2001 when the 1st and 2nd Defendants purported to claim ownership and possession of the same suit land. It is worth noting that John Gakuo was in a state of extreme hurry to dispose of the suit land soon after the purported allotment. The letter of allotment to him is dated 07/09/1995 and he was required to pay Kshs.72,590/= as stand premium. By 06/11/1995, the same suit land was being sold at the inflated sale price of Kshs.2,000,000/= (Kenya Shillings Two Million).
16. Based on the above facts, evidence and the law, I am satisfied that the Plaintiffs herein have established on a balance of probabilities that they are the true and proper owners of the suit land vide Grant Number IR 34466 for a term of 99 years from 01/08/1979. I am also satisfied, and I entirely agree with submissions made by learned counsel for the Plaintiffs that the 1st and 2nd Defendants have no remedy against the Plaintiffs. The said

1st and 2nd Defendants can only pursue one John Gakuo and the Commissioner of Lands. It is clear therefore that the 1st and 2nd Defendants title which came into being through the Letter of Allotment dated 07/09/1995 to John Gakuo is invalid for failure by the Commissioner at Lands to comply with section 3(a) of the Government Land Act (GLA). The evidence shows that the suit land was not unalienated land for disposal at the whim of the Commissioner of Lands. In any event, the provisions of section 23 of the RTA completely protected the Plaintiff's interests in the suit land as at 07/09/1995 when the Commissioner of Lands purported to allot the same to one John Gakuo.

17. In the premises and for the reasons above given, the Plaintiffs' claim against the Defendants succeeds. Accordingly:-

- (1) *It is hereby declared that the 2nd allocation of the plot No. IR No.34466 LR No.209/9330 to John Gakuo by the Commissioner of Lands is null and void ab initio and the subsequent transfer by John Gakuo to the 1st and 2nd Defendants was null and void as well as the creation of a new Grant IR 68190 – LR No.209/12806.*
- (2) *I order that the 1st and 2nd Defendants be and are hereby evicted from the suit land.*
- (3) *It is hereby ordered that a permanent injunction be and is hereby issued against the 1st and 2nd Defendants or their agents or servants or agents from interfering with the suit land in any manner whatsoever.*
- (4) *The Plaintiffs shall have the costs of this suit and interest thereon at court rates.*

It is so ordered.

Dated and delivered at Nairobi this 30th day of April, 2010.

R.N. SITATI

JUDGE

Read and delivered in the presence of:-

Mr. Masika (absent) For the Plaintiff

Mr. Ibrahim (present) For the 1st and 2nd Defendants

No appearance for the 3rd Defendant

Weche - Court clerk