



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

Civil Suit 337 of 1998

MAVOLONI COMPANY LIMITED..... PLAINTIFF

VERSUS

STANDARD CHARTERED ESTATE

MANAGEMENT LTD 1ST DEFENDANT

ROSAM ENTERPRISES2ND DEFENDANT

GREEN ACRES VEGETABLE AND

FLOWER EXPORTING COMPANY.....3RD DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH DEFENDANT

J U D G M E N T

The Plaintiff's case was dismissed by the Court on 7th May 2009 under Order IXB rule 4(1) of Civil Procedure Rules on grounds that the Plaintiff despite service with the hearing notice, did not attend court; that only the Defendants, (except 4th Defendant) appeared for the hearing of the suit and further that none of the Defendants admitted any part of the Plaintiff's claim against them. The entire Plaintiff's suit stood dismissed as against all four Defendants.

The 3rd Defendant had a Counterclaim against the Plaintiff in the Amended Defence and Counterclaim filed on 15th October, 2004. In its Counterclaim, the 3rd Defendant/Plaintiff in the Counterclaim seeks four prayers; that judgement be entered for the 3rd Defendant against the Plaintiff for:

a) Vacant possession of all these properties known as Ndalani/Mavokoni Block 1/1131 and Kakuzi/Ithanga/Gituamba/Block 1/876.

b) Damages

c) Costs

d) Interest

The 3rd Defendant's case is that it is the registered owner of the two suit properties. Mr. Panasar, a director of the 3rd Defendant testified that the Defendant bought the suit property in a valid and legally conducted public auction on the 15th October, 1997. The Memorandum of Sale for both properties were produced as exhibits I and 2. Mr. Panasar testified that after payment of the purchase price for both properties in the sum of Kshs.60 million, the two properties were registered in the 3rd Defendant's name. The copies of Title to the two suit properties were produced as exhibit 3 and 4. They were duly certified as true copies of original. Mr. Panasar testified that the original titles were the subject of a suit being an Originating Summons filed in the **High Court Nairobi (OS) No.271 of 2005 (ELC 1566 of 2007)**. A copy of the proceedings was produced as exhibit 5.

Mr. Panasar testified that the Defendant company had possession of the suit land for a brief moment. During that period, the witness testified that the coffee on both pieces of land was tended to, fertilizer applied and coffee weeded. That one year later when the Defendant sent its workers to the land to harvest the crop, the workers were ambushed, harassed and chased off the suit properties. It was his evidence that they were unable to return to the suit land. Mr. Panasar urged the court to give the Defendant judgment only for vacant possession and costs. Mr. Panasar abandoned the other prayers in the Counterclaim.

Mr. Owino for the Plaintiff in the Counterclaim, in his brief submissions urged the court to find that the 3rd Defendant had shown that it bought the suit property and obtained a good title under Section 74 of Registered Land Act.

I have considered the evidence adduced by Mr. Panasar on behalf of the 3rd Defendant and Plaintiff in the Counterclaim. That evidence is unchallenged and stands uncontroverted. The Plaintiff has produced copies of the Title Deed as proof that the two properties were registered in its names. The court is satisfied that the Plaintiff in the Counterclaim acquired a good title to the two suit properties. The Plaintiff has demonstrated that it bided for the properties at a public auction. There is no challenge before this court by any party, to the extent that the Chargee acted in bad faith or without regard to the Chargor's interest. Under section 74 and section 77(1) of Registered Land Act, the Chargee had a right to sell the suit properties. Under section 77(2) of Registered Land Act, the Chargee and through it, the Plaintiff herein was entitled to recover possession of the suit properties upon sale at the public auction.

I am satisfied that the Plaintiff herein is entitled to vacant possession of the suit properties having bought the properties and acquired titles over them in its name.

Having come to the conclusion I have of this matter, I enter judgment for the 3rd Defendant/Plaintiff in the Counterclaim against the Defendant in counterclaim and the Plaintiff in the main suit, in terms of prayers (a) and (c). The 3rd Defendant/Plaintiff is granted an order of vacant possession of both suit properties known as Ndalani/Mavoloni Block 1/1131 and Kakuzi/Ithanga/ Gituamba/Block 1/876, with costs of the suit.

Those are the orders of the court.

Dated at Nairobi this 22nd day of May, 2009.

LESIIT, J.

JUDGE

Read, delivered and signed in presence of:

N/A for the Applicant

N/A for Miss Dar for 1st Defendant

Mr. Muthee holding brief Mr. Chege for 2nd Defendant

N/A for Mr. Owino for 3rd Defendant

N/A for 4th Defendant

LESIT, J.

JUDGE