



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

Civil Case 1316 of 2002

1. Land & Environmental Law Division.

2. Subject of main suit:- Sectional TITLE

Sectional properties Act No.21 of 1987

3. Dispute: Plaintiff and defendant co-owners of residential flats and two shops. Plaintiff seeks separate title its 50% of the property under the Sections Properties Act.

Defendant claims that the property cannot be subjected under the act.

4. Suit visited 29.5.07 LR 209/136/36

0.0302 hectares

Kirinyaga Road Nairobi.

5. Held

Property can be divided under the act

6. Case law nil.

7. Sectional Properties Act No.2 of 1987

8. Title to apartment: subleases or Sectional title J. M. Kibuchi – a paper delivered at the Law Society of Kenya

ar on Land Law & Conveyancing Nyeri 29 July 2005. www.lawsociety.co.ke

9. Bench research online www.strataman.com.au

10. Advocate

M. Khan for M.A. Khan & Co. Advocates for the plaintiff

Anil for Anil Joshi & Co. Advocates for the defendant

DAMARIS NDUTA GITAU PLAINTIFF

V E R S U S

HARJU KARSAH KANJI.....DEFENDANT

J U D G M E N T

I. Background

1. This suit concerned the Sectional Properties Act NO.21/1987.
2. Damaris Nduta Gitau (the plaintiff herein) inherited a piece of property along Kirinyaga Road in Nairobi from her late husband. The property is currently registered in her name and that of Harji Karson Kanyi (the defendant herein).
3. This court visited the suit premises being Land Ref.No.209/136/36 comprising of 0.0302 hectares and or thereabout. (Both parties are registered as proprietors and lessees from the Government of Kenya for a term of 50 years as of 1st January 1994). The court found a five story building comprising of the ground floor three/two shops a stair case leading to four floors above. The first floor is a parking area for vehicles together with a caretaker's office. The second, third and fourth floor consists of equal flats in seize and a roof top used to hang clothes laundry, a caretakers room.
4. It is the defendant who is in control of the premises. He manages the building, collects rents, pays all outgoing expenses then pays the plaintiff her share.
5. The plaintiff was not satisfied with this arrangements. She requested the defendant to sub-divide the building under the Sectional Properties Act No.21/87 (herein referred to as the Act) in order that she may have title to portion of the building and collect her own share of rents.
6. The defendant objected to this and raised issues that the lease given to the two of them does not fall under the said Act. It would be impossible to share the common area.

II The issue for determination

7. From the evidence before court it is not disputed that the plaintiff and defendant are jointly registered as proprietors as lessees from the government for a term of 50 years, starting from 1st January 1994 of LR NO.209/1361/36. It is admitted by the defendant that he is in control of the property and does collect rents and pays out-goings of the land. He alleges that he gives an up to date account of this to the plaintiff.
8. The plaintiff in effect did not agree that she was being given an up to date account of the proceeds of the premises. According to her, she had suffered loss due to the defendant management. I gather that if the plaintiff was satisfied with the accounting and management of the property she would not have made request that the property be divided under the Sectional Properties Act.

III The dispute

9. The issue therefore that is in dispute is whether -: “ the property [can] be brought under the Sectional Properties Act so that the plaintiff and the defendant can have separate titles to their respective portions of the building?

Can the property be subdivided under the Sectional Properties Act?”

10. The plaintiff stated in court that if her prayer are granted, she is ready and willing to bear the costs of putting the said property under the Sectional Properties Act.

The usage of the building is both commercial and residential.

IV The Sectional Properties Act

11. This is:- “an act of parliament to provide for the division of buildings into units to be owned by individual properties and common property to be owned by proprietors for the use and management of the units and common property and for concerned purposes”.

12. This act came into being and on force on 1st April 1990. It was as a result of financial institution rejecting such – lease of flats as good titles. The title was dependant on the head lease who may be either the government, local authority, grant individuals or companies holding free hold titles. Kenya Australian system of condominium (Latin faco- ownership). Permits ownership strata title – is a:-

“ form of ownership devised for multi-level apartment lease which have apartments at different areas or “strata”.

13. This type of title has enabled division of land in Australian into lots or units and common property.

11. The defendant argued that he did not wish the property to be divided into the Sectional Properties Act. That the act would not apply to the type of lease held. What would actually happen to the common areas?

14. What the Sectional Property Act entails is that the buildings “can be divided into sections and common property”

It enables one to acquire a “separate ownership that is coupled with joint ownership in such common property”. It provides joint ownership to section of the buildings and separate ownership to other portion of the building. It allows for the registration and interest of leases of the building.

15. The land held by the parties is under the Registration of Titles Act. The argument was that this act is not subjected to the said Sectional Properties Act. The law as it stands, I have noted is the Registered Lands Act which in effect gives the “ right and obligation of parties”- PW2, Peter Ndirangu a surveyor holding a Bachelor of Science & Master degree informed this court that the Registration of Titles Act such as is held by the parties are first converted to the Registered Land Act first before the Sectional Property Act is registered.

16. I would agree with this stand in law. That the Registered Land Act is the substantive law to be used. That land registered under the Government Land Act or the Registration of Titles Act must first be converted to the Registered Land Act. In the same process there requires to thereafter formed a corporate body similar to a company registered under the companies act. Note that:

“When the building of estate is brought under the Sectional Properties Act, the corporate body automatically comes into beingrequiring any other incorporation formalities to be deserved”

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17. It is therefore possible in Kenya to register individual titles under the Sectional Property Act. What happens to the common areas. This was contentious, as the defendant claim that the staircase cannot be divided between the parties? Under Section 6 & 7 of the Act, common areas are considered as common properties. These include passage of water, sewage drainage, electricity, garage and telephone radio services, the free and uninterrupted access and use of urgent doors. This includes in this case, the staircase, passage way. The roof top where clothes are hanged for laundry; the parking area on the first floor.

18. The common areas would be managed by the corporation whose members are the owners of the unit and or person so entitled. An institutional manager would be approved by the Board of Management.

III In conclusion

19. In conclusion, I find that the property in question can be sub-divided under the Sectional Property Act. The plaintiffs agrees that the defendant may retain his flat but the caretaker office be given to her. I would nonetheless find that the caretaker's office would now fall under common area I would be required to go to the cooperation.

20. I further find that lack of the parties used their respective flats equally, one flat on each floor.

21. As to the shops on the ground floor, the plaintiff seeks to have the smaller seize shop in her name. I would agree that the shops also be divided but the question is whether the sub-division would be to the benefit of the parties.

22. I believe that the parties having failed to agree on the suitable management style, by giving ownership individually to the units respectively the control of the property would be of benefit to both of them. I further add that a 45 year lease only is held in order for the Sectional Property Act to apply.

23. I accordingly give judgment to the plaintiff as prayed and order that she bears the costs of putting the property under the Sectional Properties Act.

24. I award the costs of this suit to the respondent.

DATED THIS 18th DAY OF JUNE 2007 AT NAIROBI

M. A. ANG'AWA

JUDGE

M. Khan for M. Khan & Co. Advocates for the plaintiff

A. Joshi for Anil Joshi & Co. Advocates for the defendant