



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE 522 OF 2004
RAFRI PROPERTIES LIMITED AND ANOTHER PLAINTIFF
VERSUS
JOSHUA ONYANGO ANGUKA AND OTHERSDEFENDANT
JUDGEMENT

The three Plaintiffs are limited liability companies incorporated in the Republic of Kenya under the provisions of the Companies Act (Cap 486 Laws of Kenya).

In default of the appearance or defence filed by the Defendants herein, the suit was fixed for hearing under Order IXB Rule 1.

PW.1 Sunil Rajni Shah, a director of all the three plaintiff companies, testified that on 19th August, 1993, the 1st plaintiff purchased the piece of land bearing L.R. No.209/11254, the 2nd plaintiff similarly purchased a piece of land bearing L.R. No.209/11255, and the third plaintiff purchased the piece of land bearing L.R. No.209/11256 from Kianu Enterprises Limited Company. He produced certified copies of Deeds of Transfer and title deeds under the Registration of Titles Act to prove that the properties in issue are indeed transferred and registered in the names of the three Plaintiffs.

Their attempts to take occupation of these suit properties were thwarted twice by the Defendants who threatened them against taking over the possession.

Thereafter, this suit was filed seeking prayers for permanent injunction against the Defendants from interfering with the peaceful possession and/or interfering with the parcel of land known as L.R. No.209/11254, L.R. No.209/11255, and L.R. No.209/11256. It also sought prayer that the Defendants be evicted from those parcels of land.

The Defendants have not appeared to contest the claims of the Plaintiffs. Even otherwise, I am satisfied that as per the Deeds of Transfer and the Title Deeds issued under the Registration of Titles (Cap 281) (Ex. 1A, 1B, and 1C), the Plaintiffs are duly registered as the proprietors of the suit properties.

Section 23 of the said Act (Cap 281) provides that a certificate of Title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, of course subject to encumbrances, etc. contained therein. The interest of the

Defendants has not been mentioned in the Title and/or transfer.

Thus, I do find that the three plaintiffs are the absolute and indefeasible owner of pieces of land bearing L.R. No.209/11254, L.R. No.209/11255 and L.R. No.209/11256 respectively.

The Defendants who are on the said lands have no colour of right to occupy the same and are trespassing on those pieces of land.

I do thus allow the plaint and order that the Defendants by themselves or their agents or representatives are injuncted permanently from interfering with peaceful possession of the plaintiffs and/or from interfering with the parcels of land known as L.R. No.209/11254, L.R. No.209/11255, L.R. No.209/11256.

I further order that the defendants do vacate the said parcels of land and in the event of any resistance, the police officers manning Embakasi Police Station to assist the plaintiffs in evicting and/or removing the Defendants from parcels of land bearing L.R. No.209/11254, L.R. No.209/11255. L.R. No.209/11256.

As there is no appearance from the Defendants, I do not make any order on costs.

Dated and signed at Nairobi this 4th day of June, 2007.

K.H. RAWAL

JUDGE

4.6.07