



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

Civil Case 14 of 2007

1. Land and Environmental Law Division
2. Subject of main suit: Land ownership

Registration of Titles Act

Cap 281 Laws of Kenya

LR 209/525/16

Nairobi, River Road

ii) Lease originally issued as LR209/525 from 21 October 1913.

iii) Sub-divided

LR209/525/13

LR209/525/15

LR.209/525/16

iv) Assigned to defendant No.1 as head lease

31 December 1975 (indenture)

v) Defendant alleges to disposes

LR209/525/13

LR209/525/15

But restrained

LR209/525/16

vi) 11 May 1978 (indenture) assigned

LR209/525/16 to the plaintiff 1- 3

vii) Lease was to expire on 20 October 2002

viii) Plaintiff applied for extension of lease and were offered extension of lease 22 March 1999.

Copied to defendant by 2nd defendant

Commissioner of Lands.

ix) Letter of allotment 10 June 2004 offered to by Commissioner of Lands which was accepted by plaintiff for 50 years lease.

x) Before grant could be issued . Defendant filed application for Judicial Review on 6 December 2004.

xi) Leave to commence Judicial Review proceeding granted Ibrahim J
(8 December 2004).

xii) Before Judicial Review notice of motion application 16 December 2004

Could be concluded. Defendant is issued with new grant dated

13 November 2006 for 50 years.

xiii) Defendant claim rents from plaintiffs tenants on the suit premises to be paid to him in default eviction.

xiv) Plaintiff files suit on 11 January 2007 and seeks injunction to application dated 10 January 2007.

xv) Temporary injunction issued Kihara Kariuki on 11 January 2007 (Court vacation). Further extended by Mugo J on 25 January 2007.

xvi) Inter parties hearing on 12 and 19 November 2005.

3. Application 10 January 2007

i) Injunction prayed for by plaintiff to restrain the defendant No.1 his agents and or servants from dealing on interfering with plaintiffs rights and on tenants of plaintiff occupying premises and or selling transferring alienating the property pending determination of main suit.

4. Arguments by Advocate for plaintiff

i) Title belongs to plaintiff

Commissioner of Lands made offer to extend lease for 50 years whilst this was taking place defendant files Judicial Review whilst Judicial Review pending 50 year title lease issued to defendant.

Doctrine of LIS Pendes

Section 52 Indian Transfer of Property Act applies

5. Arguments by advocate for defendant

1. Once a title has been issued then the title is inadmissible.

Dr. Joseph N. K. Arap Ng'ok

v

Justice Maijole Keiwua & 4 Others

Misc application Na 60/97

(Tunoi, Shah, Pall) 17.10.97

6. Held:

- i) Prima facie case made out
- ii) Injunction to issue till the determination of main suit.

7. Case law.

a) Dr. Joseph N.K Arap Ng'ok v Justice Moiyo ole Keiwua

Tunoi, Shah Pall JJA CA 60/97

b) Sun Palm Ltd & Others v Pierre Corporate Ltd

Kwach, Shah Lakha JJA CA 242/97

c) Kagonja v Popat & Others

Osiemo J, Hccc96/05

d) Usiu case

8. Advocate:

A.B. Shah with Njeri Mucheru Oyatta of S. Kimondo Mubea & Co. Advocates for the 1st defendant/applicant – present

J. Mwaniki & Co. Advocate for the 3rd defendant – absent

J. Machira of J. Machira & Co. Advocates for the plaintiff/respondent – present

NEMCHANDA LAGHDIR SHAH1ST PLAINTIFF

BABULAL NEMCHANDA SHAH 2ND PLAINIFF

MUKESHCHAND NEMCHANDA SHAH 3RD PLAINTIFF

VERSUS

APPOLLOS HIRAM MUNA 1ST DEFENDANT

THE COMMISSIONER OF LAND2ND DEFENDANT

RULING NO. 2

I: Application for injunction against the defendant from interfering with the suit premises dated 10 January 2007.

a) Background of application

i) Parties

ii) Plaintiffs.

Nemchand Lagidis Shah - Father

Babulal Nemchand Shah - Son

Mukeshchand Nemchand Shah – son

Are plaintiffs 1, 2 and 3 herein respectively.

They are represented by:

M/s Macheru & Co. Advocates

The lead counsel is A.B. Shah (a retired Court of Appeal judge) Assisted by M.G. Oyatta.

b) Defendants

Appollos Hiram Muna 1st defendant

Represented by Kimondo Mubea & Advocates

The lead counsel J.P. Machira

Assisted by M. Kimondo.

The Commissioner of Lands – 2nd defendant

The Attorney General – 3rd defendant

Both represented by the Attorney General. There has been no consistent state counsel who attends to this case.

i) Facts

1. This suit concerns land ownership under the Registration of Titles Act Cap.281 Laws of Kenya. The land in question was originally LR 209/525/Nairobi River Road which was issued on a lease from 12 October 1913. It was sub-divided to LR 209/525/13, LR 209/ 525/15 and LR 209/525/16. The heard lease was assigned to the defendant No.1 by an indenture on 31 December 1975.

The 1st defendant alleges that he disposed of LR 209/525/13 and LR 209/525/15 but retained LR 209/525/16. By another indenture 11 May 1978 he assigned the latter portion to plaintiffs 1 – 3.

2. The lease was to expire on 20 October 2002. The defendant alleges that in 1978 be

applied for the extension of this lease and again in 2001 but received no response from the Commissioner of Lands. The plaintiff in the meantime applied for the extension of the lease and was offered an extension on 22 March 1999 for 50 years. A letter to this effect was computed to the defendant. "a letter of allotment" was issued to the plaintiff's on 10 June 2004 which the plaintiff accepted. They were awaiting for a grant to be issued but before this could be done the defendant filed in the High court of Kenya at Nairobi for a Judicial Review on the 6 December 2004. The leave to commence Judicial Review against the Commissioner of Land was issued by Ibrahim J on 8 December 2004. A notice of motion was filed in the misc. application 1669/04 court case on 16 December 2004. This application is still pending.

4. Whilst the application was pending the Commissioner of Lands issued a new grant to the defendant dated the 13 November 2006 for a period of 50 years.

5. The defendant proceeded through his advocate on record to write to the plaintiff and their tenants in the suit premises that all rents now belong to him. That the tenants should remit their rents to him as owner of the suit property.

6. The plaintiff filed suit on 11 January 2007 and sought an injunction in their application of 10 January 2007 which is the subject matter of this suit.

7. The facts above herein are subject to trial and proof but is stated herein as a part of the back ground required for this application.

B) Application dated 10 January 2007.

8. This application sought for temporary injunction against the defendant for restraining orders from interfering with the plaintiff and that their tenants in the suit premises. It came during the court vacation and was granted by Kihara Kariuki J on 10 January 2007 and further extended on

25 January 2007 by Mugo J till the hearing inter-parties of this application.

9. I did request the parties and other advocates in other cases not related herein to address me on the issue of whom to sue as defendant where the state is concerned in land matters. That ruling on the point was delivered on

26 June 2007. The parties then fixed this matter for inter parties hearing but due to reasons accepted by this court, the inter-parties hearing was heard on 12 November 2007 and 19 November 2007.

iii) Arguments by the plaintiff/applicant

10. The plaintiff applicant prayed that there be an injunction till the finalization of this suit. The reasons being that the plaintiff are entitled to the lease being extended and as such the defendant had from the very start no right for revitionary interest at all. The Commissioner of Lands first made an offer to the plaintiff and extended the lease for 50 years. During the time the letter of allotment having been offered the defendant filed a Judicial Review then whilst the Judicial Review was pending he was allocated the suit premises being the title deed. This contravenes the doctrine of LIS Pendes under section 52 of the Indian Transfer of Property Act. Namely whilst a suit is pending in court any transfer on property obtained by a party is null and void.

iv) The arguments by the advocate for the defendant.

11. The defendant did not accept this argument. He stated that once a title has been issued then it becomes absolute and inadmissible. He relied on case law where the lead counsel for

the plaintiff was a judge of appeal in up holding this concept:-

Dr. Joseph N.K. arap Ng'ok v Justice Maijo Ole Keiwua & 4 Others.

Misc application Nairobi 60/97

(Tunoi, Shah, Pall) (17 October 1997).

12. Justice Shah in reply stated the ruling in that case was temporary and had not yet been concluded on the main suit.

iv) Should an injunction issue?

13. There are triable issues in this case more so on the role of the Commissioner of Lands who offers a letter of allotment to one party, their issues a title deed to another party without cancelling the first letter of offer.

14. I find of interest that this court requires to determine what occurs when a lease expires and whether such lease can be extended and to whom?

15. In this particular case a suit was pending when the defendant was issued with a title for 50 years. Does the doctrine of Les Pendes apply as when this occurred there was a suit existing between the parties?

16. I hereby find that there has been made out a prima facie case against the respondent/defendant and accordingly hold that an injunction do hereby issue against the said respondent/defendant till the finalization of this suit.

Dated this 23rd day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

A.B. Shah with Njeri Mucheru Oyatta of S. Kimondo Mubea & Co. Advocates for the 1st defendant/applicant – present

J. Mwaniki & Co. Advocate for the 3rd defendant – absent

J. Machira of J. Machira & Co. Advocates for the plaintiff/respondent - present