



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Case 145 of 2004

RAMJI DEVJI VEKARIA.....1ST PLAINTIFF

LELJI SHIVJI KERAI.....2ND PLAINTIFF

=VERSUS=

MUNICIPAL COUNCIL OF ELDORET.....DEFENDANT

JUDGMENT

The Plaintiff filed this suit against the Defendant, the Municipal Council of Eldoret seeking the following orders:-

- (a) A Declaration that the Defendant through its servants, Staff and /or agents is a trespasser to the Plaintiff's parcel of land known as ELDORET MUNICIPALITY BLOCK 8/576 and that the Defendant's conduct is illegal, null and void ab initio.
- (b) A Temporary and permanent injunction to restrain the Defendant either acting by itself, servants and /or agents from interfering or dealing with the Plaintiff's parcel of land known as ELDORET MUNICIPALITY BLOCK 8/576 including the buildings / structures standing thereon.
- (c) A mandatory injunction to compel the Defendant to forthwith remove its servants / staff and / or agents from the Plaintiff's aforesaid parcel of land to enable the Plaintiffs have vacant possession.
- (d) Costs and interest.

The Plaintiffs in their plaint dated 16th November, 2004 avers that: -

v At all material times they were and are the legitimate proprietors of that parcel of land known as Eldoret Municipality Block 8/576 measuring 0.6321 Hectares having purchased the same from Somog Limited who were the original leaseholders at a total consideration of two million, one hundred thousand shillings only (Kshs 2.1 million).

v Upon purchase of the said land, the Plaintiffs were duly issued with a certificate of lease on 4th December, 2002. The Plaintiffs aver that the entire transaction culminating to the issuance of the certificate of lease was sanctioned by the Defendant.

v The Plaintiffs duly paid up to date the requisite land rates and other applicable charges to the Defendant and has also paid the land rent to the Department of lands.

v The Plaintiffs have been and are still desirous of undertaking developments –cum- renovations on the property and the buildings standing thereon.

v However, when the Plaintiffs took workmen on their said parcel of land, to their utter shock and consternation, they found some strangers who had trespassed and occupied the building standing thereon.

v Upon inquiries, the Plaintiffs were surprised when the said strangers intimated to the Plaintiffs that they had been given the house by the Defendant as they were the Defendant’s staff, servants and / or agents.

The Defendant finally filed an Amended Defence and Counter- claim in which it admitted that it had possession of the suit property and that any transfer to the Plaintiffs was fraudulent, illegal, null and void ab initio. The Defendant claimed that the property belonged to it. They cited various particulars of fraud and termed the whole transaction as an act of “Land Grabbing”.

In the counter claim, the Defendant prayed for an order that the register be rectified and the registration of the Plaintiffs as the proprietors of the land be cancelled.

At the hearing, the First Plaintiff testified on behalf of the Plaintiffs. He produced the following documents in evidence:-

1. The agreement for sale dated 28/8/96 between Magut Agencies Ltd and the Plaintiffs.
2. Lease Registration to Eldoret Municipality /Block 8/576 dated 19th September, 2002.
3. Transfer of lease on the suit property.
4. Green cards dated 17/3/2000.
5. Certificate of Lease dated 4/12/2002
6. Addendum to the Agreement dated 20/1/2003.
7. Official Receipts from the Ministry of Lands.
8. Rates payments to the Defendant dated 17/6/2004.
9. Rates payments and Demand Notice dated 14/1/2005 (Receipts).
10. Rates payments request and Demand Notice dated 13/3/2007 (receipts) and 13/3/06, respectively.

The Defendant never attended the hearing and did not call any witnesses or tender any evidence. They were represented by Counsel throughout the proceedings and who thoroughly cross-examined the First Plaintiff.

Upon consideration of the evidence produced and tendered by the P.W.1, Mr. Ramji Devji Vekaria, I do find that on the 27th August 1996, the Plaintiffs entered into an agreement to purchase portion of land out of all that piece of land known as Eldoret Municipality Block 8/83 which had been allotted to M/S Magut Agencies Limited. The Vendor was selling 2.5 acres out of the said land for Kshs 3.4 million. The entire land measured 15 acres.

The said land was subsequently subdivided and one of the subdivisions was the suit property title No. Eldoret Municipality Block 8/576 measuring about 1.5 acres. The lease by the Government of Kenya was given to a company called Somog Limited. It became clear during the trial that Magut Agencies Limited had assigned or ceded its allotment rights to M/S Samog Limited. It was then agreed that the Plaintiffs would be sold the said piece of land at the revised price of shs 2.1 million. The transfer to the Plaintiff is dated 4th December, 2002. The Certificate of lease in favour of the Plaintiffs was issued on the same date by the Land Registrar. It was for a term of 99 years from 1/11/97.

I do hereby find that the transaction and all the processes leading to the issuance of the lease were lawful, valid and legal. I also find that the Plaintiffs have been paying land rates and rent. The rates have been paid to the Defendant itself.

On the basis of the foregoing and on a balance of probability, I do find and hold that the Plaintiffs have proved their case. They are the registered owners of the suit property and the legitimate proprietors. They duly acquired the said property in good faith, for value and without any knowledge of any defect in the title. The Defendant did not object or obstruct the said acquisition yet they were aware when it was on-going. The Defendant filed defence and Counter-claim. The Defendant retained Counsel who cross-examined. P.W.1.

The Defendant did not ultimately tender any evidence. This is the clearest of admissions of the Plaintiffs' claim, cause of action and Title. If there were any merits in the defence and Counter-claim, the Defendant would surely have sent witnesses and tendered evidence considering the serious allegations of impropriety and fraud.

I therefore have no hesitation in entering judgment which I hereby do in favour of the Plaintiffs in terms of prayers (a) (b) (c) and (d) of the plaint dated 16th November, 2004.

I hereby dismiss the Counter- claim with costs to the Plaintiffs. Orders accordingly.

DATED AT ELDORET THIS 13TH DAY OF NOVEMBER 2007.

M.K. IBRAHIM,

JUDGE.