



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

Civil Suit 525 of 2006

1. RAVJIBHAI UMEDBHAI PATEL

**(Also known as RAOJIBHAI U. PATEL., ISHWARBHAI NARANBHAI PATEL).....1ST
PLAINTIFF**

2. DR. SUMITRA RAJNIKANG PATEL,

**(suing as administrator of Estate of RAJNIKANT ISHWARBHAI PATEL)..... 2ND
PLAINTIFF**

3. URMILABEN VINUBHAI ISHWARBAHI PATEL(Also known as URMILA V. PATEL

**suing as administrator of the Estate of VINUBHAI ISHWARBHAI PATEL)..... 3RD
PLAINTIFF**

VERSUS

PATEL DILIPKUMAR HARSHAVADAN

**(Also known as PATEL DILIPKUMAR HARSHAVADAN).....
DEFENDANT**

RULING

(1) Patel Dilipkumar Harshavadan, the Defendant, is by virtue of a Grant registered in the Land Titles Registry at Nairobi as Number I.R.99506/1 the registered owner for a term of fifty years from the 1st May, 2005 of all that piece of land situated in Nairobi known as L.R No. 209/132/2 comprising 0.1206 of a hectare (“**the suit land**”).

(2) On the 19th May, 2006, the Plaintiffs filed this suit against the Defendant alleging that the process through which the Defendant became the registered proprietor of the suit land was riddled with illegality and fraud. The Plaintiffs, who claim to be beneficially entitled to the suit land, pray for judgment against the Defendant, *inter alia*, for:—

- (a) a permanent injunction restraining the Defendant from selling, transferring or collecting rent from the suit land.
- (b) a permanent injunction compelling the Defendant to surrender title to the suit land and for the Plaintiffs to be registered as the proprietors thereof in common in undivided shares.
- (3) On the same date, the Plaintiffs applied by Chamber Summons under Order 39 rules 1 and 2 of the Civil Procedure Rules for various orders including a temporary injunction to restrain the Defendant from selling or transferring the suit land or from demanding, collecting or receiving any rent therefrom. The application is supported by an affidavit sworn by Dr. Sumitra Rajnikant Patel, the Second Plaintiff. In the affidavit dated the 13th May 2006 which Dr. Patel makes on his own behalf, on behalf of the Estate of Rajnikant Ishwarbhai Patel (deceased) as well as on behalf of the First and Third Plaintiffs, he repeats and amplifies the averments in the Plaint. An interim injunction was granted by the court on the 22nd May 2006 in terms of prayer No. 2 of the application which order has since been extended from time to time.
- (4) There is a Defence dated the 31st May 2006 but it does not appear to be properly on record as there is no evidence of its having been duly filed. The Defendant filed his own replying affidavit on the 31st May 2006 in opposition to the Plaintiffs' application. He also filed Grounds of Opposition and a Notice of Preliminary Objection on the same date.
- (5) When the Plaintiffs' application came up for hearing on the 5th June, 2006, I allowed the Defendant's Advocate to raise the objection. The objection is that —

“(1) The Plaintiff/Applicants are strangers with no *locus standi* in the suit property and hence they are in capable of maintaining any suit in law as against the Defendant.”

“(2) The Plaintiff/Applicants' purported interests in the suit property, if any, had long ceased with effect from 1st January 2002 when the same became automatically extinguished by effluxion of time.”

“(3) The Plaintiff/Applicant's failure to forward to the Registrar for registration against the suit property their respective Letters of Administration of the Estate of the three original lessees (all now deceased) from whom they purport to derive their interests was and remains fatal and hence their claim must fail.”

(6) Mr. Avedi, learned counsel for the Defendant, contended that any legal interest or rights the Plaintiffs may have had in the suit land were extinguished when the Government lease thereof expired on the 31st December 2001. Citing statutory provisions and authorities, he urged that the suit be struck out with costs on the grounds stated in the Preliminary Objection.

(7) Mr. Mwangi, learned counsel for the Plaintiffs, conceded that the Government lease of the suit land expired on the 31st December 2001. However, he argued that the suit land did not automatically revert back to the Government as no proceedings had been instituted to forfeit the lease or take back possession or re-allocate the suit land. Further, no notice had been issued by the Government of its intention to take any of such steps. Citing extensively from the Government Lands Act [Cap. 280] and the Transfer of Property Act, 1882, of India, he urged that the Preliminary Objection be dismissed with costs.

(8) Having considered the submissions of both learned counsel, I have come to the conclusion that the objection is misconceived for a number of reasons. First, the Plaintiffs claim to be beneficially entitled to the suit land (in their respective capacities as the Administrators of the respective Estates they represent) and that the Defendant therefore holds the same in trust for the Plaintiffs. They have even registered a caveat against the title to protect their interest. Secondly, the Plaintiffs allege that the Defendant's title to the suit land was obtained unlawfully and fraudulently and have provided detailed particulars thereof. Furthermore, the issues raised by the Defendant in his Notice of Preliminary Objection, read in conjunction with his Defence, the Reply to Defence and the Plaint also raise matters of fact for

determination and I am therefore unable to agree at this stage that the suit can be struck out so casually in summary the manner as the Defendant suggests.

(9) It must follow from the foregoing that the Preliminary Objection notice of which was filed on the 31st May 2006 fails and it is ordered that the same be and is hereby dismissed with costs to the Plaintiffs assessed at Kshs.5,000/= to be paid within the next twenty-one (21) days of the date hereof and in default execution to issue.

Dated and delivered at Nairobi this Thirtieth day of June 2006.

P. Kihara Kariuki

Judge