



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1214 OF 2001

ITE FARMERS CO-OPERATIVE SOCIETY LTD.PLAINTIFF

VERSUS

COMMISSIONERS OF LANDS & FOUR (4) OTHERSDEFENDANTS

RULING

The plaintiff by its LS of the 23.7.2001 seeks onus for injunction to restrain the defendants, their servants or agents from dealing or developing three pieces of land known as LR Nos 12672/151, 153 and 189 pending the hearing of this suit (the plots).

It is not in dispute that these three pieces of land are subdivided portions of LR No. 12672 of which is the plaintiff is the registered proprietor.

The subdivision of the plaintiff land was subject to the surrender of public utility plots which the Commissioner of Lands could be the subject of a regnant to the plaintiff save for one residential plot.

The plaintiff complains that the plots in respect of which the Commissioner of Lands issued three lands to the Nairobi City Council under as lands Numbers LR 85235 and LR 852376 and LR 85237 were so issued when no surrender had herein executed by the plaintiff of the plots. Subsequently these plots were transferred into the name of the 3rd defendant as a result of a sale for valuable consideration. Therefore one of the plots LR No. 12672/153 was transferred into the name of the 4th defendant for valuable consideration and the two of the three plots namely LR No.s 12672/151 and 189 were changed to the 5th defendant in respect of loans made.

Mr. Kairaria for the plaintiff submitted that the titles to the plots issued in the name of the Nairobi City Council were void due to the absence of a surrender having been executed by the plaintiff in respect of the plots. He relied on Section 20 of the Registration of

Titles Act (the Act) which is in the following terms:-

SET OUT

They also relied on Sec 44(1) of the Act which requires a Surrender of a land to be registered in the register.

The land the subject matter the surrender refused to does not include nor was it intended to include a surrender of land pursuant to a sub divisional scheme.

It is not a maker for decision now that a maker for decision in the substantive hearing of the suit as to whether or not the Commissioner of Lands was entitled or not to issue the later in respect of the plots if as the plaintiff alleges there was not surrender of the land the subject matter of the plots to the

Commissioner of Lands. If there was no such surrender then in my absence of same explanation and without in any way according the part, it would appear that with the Commissioner of Lands and the City Council acted improperly for which they may well be liable in due cause.

I hold transfer that the 3,4 and 5th defendant appear to have indefeasible titles in respect of their respective In the land and as such their intents on the land are indefeasible.

In order to succeed the plaintiff want show that it has in accordance of L.R. No. 12672 was registered un the Act in respect of which grant Nation IR 47820 was issued in the name of the plaintiffs. Sec 20 of the Act only protects dealings on the land in acceptance with the provisions of the Act.

The 3rd and 5th defendants rely on Sec 23 of the Act which states as follows:

SET OUT

Mr. Tangei and Mr. Aluoch submitted that their respective clients had received indefeasible tubes and could only be challenged on the ground of fraud or misrepresentation to which their respective clients were a party. No allegation is made of any fraud or misrepresentation on the part of the 3, 4 and 5 defendants. Indeed none could be made as each of these defendants allowed their interest on the plots by virtue of either a transfer or charge for value in which it is not dispute has for value.

The surrender referred to us Sec 44(1) as a surrender of a leave granted in respect of land subject to the Act do proceed for in Section 40 of the Act. With the principles laid down on Giella Vs Cassman Brown (1973) EA 358. It has a prima facie case with a probability of success.

In the circumstances the plaintiffs have not shown that they have a prima facie case with a probability of success and therefore damages the application with costs to the 3,4 and 5th defendants. Costs in respect of the 1st and 2nd defendants will be costs in the cause.

Ruling delivered and dated this 5th day of February, 2003 at Nairobi.

P.J. RANSLEY

JUDGE