

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(Milimani Law Courts)

CIV SUIT 545 OF 98

AVTAR SINGH BAHRA

AMARJIT KAUR BAHRA PLAINTIFFS

VERSUS

RAJU GOVINDJI GANATRA

T/A SWEETBITE MANUFACTURERS DEFENDANT

RULING

This ruling arises from a preliminary point raised by Mr. Rommel Da Gama Rose advocate for the defendant. His point was:- “Is there an actionable claim for breaches of lease dated the 15 th September, 1995 in relation to Land Reference Number 209/9831 when the claim is prosecuted by Third parties and not by the registered absolute owner of the property.”

In my view, the answer to the question Mr. Rommel Da Gama Rose raises is simple. As submitted by Mr. Goswani for the defendant, a party does not need to have title to a property for him to create a lease. The authority for that is to be found in Halsburys Laws of England, 3rd Ed. Vol. 15 para 455 and 456 where it is stated:- “The relationship of landlord and tenant may be brought into being even though the landlord has no title to the land of which he has purported to create a tenancy. If a landlord, who has no title to do so, grants a lease under seal, the tenant, being a party to the deed, is estopped from disputing his lessor’s title. The doctrine of estoppel between the landlord and tenant is not, however, confined to leases by deed.

Generally, a tenant is estopped from disputing the title at the time of the demise of the landlord by whom he has been let into possession; The doctrine of estoppel which operates between landlord and tenant applies to tenancies from year to year, at will, or on sufferance, as well as to leases for years.” For the above reasons, the preliminary objection is overruled with costs.

Dated at Nairobi this 3rd day of August, 2001.

T. MBALUTO

JUDGE