



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 387 OF 1998**

SKYVIEW PROPERTIES LIMITED.....1ST PLAINTIFF

SUSAN NYAMBURA KAMAU.....2ND PLAINTIFF

JOHN MWANGI MUKUNDI.....3RD PLAINTIFF

-VERSUS

SAMVIR TRUSTEES LIMITED.....1ST DEFENDANT

KARIM HAIDERALI TEJA.....2ND DEFENDANT

HAIDERALI POPAT TEJA.....3RD DEFENDANT

PRINCIPAL REGISTRAR OF TITLES

(NAIROBI CENTRAL LANDS REGISTRY).....4TH DEFENDANT

PROVEN INSURANCE AGENCY LIMITED.....5TH DEFENDANT

JUDGMENT

The Plaintiffs have sued the Defendants over the Land known as LR No. 209/3219 Nairobi Mr. John Wachira Wambugu gave evidence that he is a Director of the 1st Plaintiff Company. The 2nd and 3rd Plaintiffs are co-directors. The 1st Plaintiff purchased the Land from the 2nd and 3rd Plaintiffs and the same was transferred to the 1st Plaintiff. The Title documents were duly registered with the 4th Defendant, the Principal Registrar of Titles. He produced the Agreement for Sale and evidence to show that the 1st Plaintiff made some payment to a Mrs. Amina who was occupying the premises so that she could give possession. He also gave evidence the 1st Plaintiff paid some money to a Mr. Gitonga so that he could lift the caveats which had been registered and he removed it. For the 1st Plaintiff his firm paid all the necessary payments to the City Council and obtained the clearance. His firm also paid the Land Rent to facilitate the Transfer.

The 1st Plaintiff had secured a loan with CFC Ltd. but found that he could not register the charge as there were allegations that there were two titles to this property. He produced a copy of the Grant with a Deed Plan dated 6.5.94.

The witness said that they served summons and plaint though a substituted service as they had made numerous attempts to serve the 5th Defendant. Since the service though an advertisement in a newspaper the 5th Defendant has not entered appearance. Prior to the filing of this suit the 5th Defendant had claimed the Land and had harassed the Plaintiff workers on site who were constructing a fence and hence

the Plaintiffs filed this suit for a declaration that the Plaintiff is the sole owner of the Land.

From this evidence by the Plaintiff and in the absence of any defence by the 5th Plaintiff who was claiming ownership of the land the Plaintiff would be entitled to the declaration that he is the sole owner of the land as against the 5th Defendant. The evidence supports the claim to ownership by virtue of the transfer of the land to the Plaintiff. Mr. Wambugu in his evidence said that a search in the Land Office showed that the Land was free from all encumbrances except for the two caveats which were later withdrawn.

There will be judgment for the Plaintiffs that the 1st Plaintiff is the Sole Registered Proprietor of the suit to the exclusion of the 5th Defendant. The 5th Defendant is restrained whether by itself, its servants, agents officers, directors or otherwise from entering or continuing to enter or selling, charging, disposing of or any way dealing with the suit premises.

The 4th Defendant or its officers are restrained from registering any instrument of disposition, transfer or charge of the suit premises on presentment for registration by the 5th Defendant or its agents or servants.

The 5th Defendant shall pay the cost of this suit to the Plaintiffs.

Delivered and dated at Nairobi this 1st day of August, 2000.

KASANGA MULWA

JUDGE