



Taj Millenium Management Limited v Taj Mall Limited (Environment & Land Case 721 of 2012) [2024] KEELC 5151 (KLR) (4 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5151 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 721 OF 2012**

AA OMOLLO, J

JULY 4, 2024

BETWEEN

TAJ MILLENIUM MANAGEMENT LIMITED PLAINTIFF

AND

TAJ MALL LIMITED DEFENDANT

RULING

1. The Applicant filed a Notice of motion dated 23rd October 2023 seeking for the following orders;
 1. The Defendant/Respondent (hereinafter referred to as the 'Respondent') do execute a transfer of the reversionary leasehold interest in all that piece of land known as Land Reference No. 209/14036, measuring nought decimal three two six four of a hectare or thereabouts and delineated on Land Survey Plan Number 229815 and annexed to the Transfer registered as IR 834448/1(hereinafter referred to as 'the Suit Property') in favour of the Applicant and to register and/or cause the said transfer to be registered in the name of the Applicant within 14 days thereof
 2. In default of execution of the said documents by the Respondent, the Honourable Court be pleased to direct the Deputy Registrar of the Environment and Land Court of Kenya to effect the transfer of reversionary interest aforesaid to the Applicant.
 3. The Respondent and/or its Advocates do surrender the original indentures to the Applicants and the Original Certificate of Title to the Applicant.
 4. In default of surrender of the Certificate of Title, the Registrar be ordered to issue a provisional title and register the said reversionary interest in the name of the Applicant without the production of the Original indenture or Certificate of Title and to effect such other entries in the Register of titles to land as would give effect to the Court's Orders herein and issue provisional certificate.



5. This Honourable Court be pleased to make such other and/or further orders as it may deem fit and expedient.
6. The costs of this application be borne by the Respondent.**
2. The motion was based on the grounds that the Respondent is the registered proprietor as Lessee from the Government of Kenya for the unexpired residue term of 99 years from 1st September, 1997 of the suit property which is located along Suguta Road, Nairobi and consists of 30 Residential Flats, Health Club, swimming pool, parking place and developed gardens managed by the Applicant.
3. That the Applicant consists of all the owners, who are the registered proprietors of valid subleases of all the 30 apartments which are in a gated community as sold by the Respondent who holds the title on leasehold basis.
4. The Applicant contended that the practice is that the reversionary interest in the mother title is transferred to the management company upon sale of all the units making the Management Company the lessor but the said process was not followed by the Respondent. That this led to the Applicant filing the main suit herein and *vide* a Judgment dated 20 October 2021 in their favour, this Court ordered the Respondent to transfer the Reversionary interest to Taj Millenium Management Limited, the Applicant.
5. The Applicant contended that the Respondent has not complied with the said judgment till date nor have they shown any interest on transferring the said reversionary interest to the Applicant, causing them to continuously suffer prejudice at the hands of the Respondent, as they cannot obtain their lawful and rightful sectional titles to which some of them are restricted from obtaining charges and or loans that they urgently need for various purposes. The Applicant further stated that the conversion of the suit property was listed in the Kenya Gazette Notice Vol. CXXIV—No. 214, dated 17th October, 2022 at page 7772.
6. That the Applicants cannot undertake any transactions or dealings such as registration of charges relating to the suit property until they can effect the conversion of title with regards to the suit property and obtain a new Certificate of Title and in order to do this, the Applicant must first hold the reversionary interest with respect to the suit property.
7. The Applicants contended that the Respondent has failed to transfer the reversionary interest in their favour of the Applicant and render available the original certificate of the suit property to enable them register the reversionary interest in the suit property in its favour.
8. I have not seen a replying affidavit from the Respondent.

Submissions.**

9. In support of its application, the Applicant filed submissions dated 10th March 2024 while the Respondent in in response opposing the application filed submissions dated 6th March 2024. The Defendant/Respondent submitted that in order for the Court to determine this motion, the Plaintiff lodged, the judgement delivered thereto and the decree issued have to be examined. They stated that in the Plaintiff, the Applicant herein, sought for the following orders;
 - a. A permanent injunction restraining the Defendant, its servants and/or agents from trespassing alienating, wasting, leasing, disposing of, damaging or interfering with the Plaintiff/applicants quiet and peaceful occupation of Unit Nos. ID and 2D situated on L.R. 209/14036 and



compelling the Defendant, its servants and/or agents to immediately cease the trespass and remove any security guards barricading the suit premises.

- b. A mandatory injunction compelling the Defendant, its servants and/or agents to cease from trespassing and to execute a lease in favour of the Plaintiffs in respect to the Plaintiff's premises being Unit Nos. ID and 2D situated on L.R. No. 209/14036.
 - c. A Declaration that the Lease between the plaintiff and the Defendant has been absolutely determined and the Plaintiff has sole and exclusive, right to re-enter the premises being the Gymnasium (Health Club) situated on L.R. N. 209/14036
 - d. Damages for trespass, costs and interest on the costs
That the Decree executed from the judgement provides that;
 1. That the Counter-Claim is hereby dismissed.
 2. That a declaration be and is hereby issued that the Defendant has breached the Lease Agreement dated 27th September, 2001.
 3. A permanent injunction be and is hereby issue restraining the defendant either by itself, its agents, servants and/or its officials from disposing off, charging, transferring or in any other manner dealing with the suit property L.R. No. 209/14036.
 4. 209/14036.
 5. A permanent Injunction be and is hereby issued restraining the defendant either by itself; its agents, servants and/or its officials from any further works bringing down the gymnasium.
10. The Respondent submitted that upon observing the Plaint, the judgement and decree issued, there are no orders compelling them to execute a transfer of the Reversionary Leasehold interest for Land parcel L.R. No. 209/14036 or any of the orders sought in the application thus the prayers sought are not incorporated thus not enforceable.
 11. The Applicant in response cited the case of *Machira T/A Machira & Co. Advocates Vs. East African Standard* (NO 2) [2002] KLR 63 submitting that Court ought not to deny a successful litigant of the fruits of his judgement.
 12. The Applicant stated that through its judgement dated 28th October 2021, the court ordered the Respondent to transfer the Reversionary interest to Taj Millenium Management Limited and three years down the line, they blatantly refused to comply with the said orders. That the Respondent in their submissions have out rightly lied in an attempt to mislead this Court by only citing some of the orders made by the Court and omitting the orders that the Applicant heavily rely on such as the first order in the judgement being a mandatory injunction be and is hereby issued compelling the Defendant by itself. its servants and/or its officials to transfer the reversionary interest to the Plaintiff within Sixty (60) days from the date hereof.
 13. The Applicant further stated that the Respondent has no interest whatsoever in the suit property and its management thereof as all the 30 apartments as well as the common areas have all been sold to the Applicant thus the Respondent is very much deserving of an order of this Court compelling them to transfer reversionary interest to Applicant.
 14. In support, they cited the case of *Vincent A Chokaa & Another V Chengdu Guangling Kenya Company Limited & 3 Others* [2022] Eklr, where owners of apartments who were represented by the Plaintiffs,



had come together to form an informal welfare association to take care of the general welfare of the property pending the operationalization of the management company and they granted the prayer compelling the Defendant to transfer reversionary interest.

15. That pursuant to section 13 (2) of the [Sectional Properties Act](#), 2020 as read with rule 18 of the [Sectional Properties Regulations](#) after the reversionary interest is transferred to the Applicants, the Applicant will have the mother title to the suit property which it will use to obtain sectional Certificates of Title to be held by the proprietors of the 30 Apartments and under which it will issue Share Certificates to the proprietors with respect to the common areas.
16. The Applicant submitted that Section 11 of the [Environment and Land Court Act](#), 2011 outlines the functions of the Registrar of the Court among them facilitating the enforcement of decisions of the Court thus in the instance the Respondent fail to comply with the directive of the court, the Applicants have sought an alternative prayer that the Court direct the Deputy Registrar of this Court to effect the transfer of reversionary interest aforesaid to the Applicant and in support cited the case of [Hong Kong Restaurant Limited & Another V Pabco Investments Limited](#) [2009] eKLR.

Determination:

17. The Applicant is seeking for orders that the Respondent do execute a transfer of the reversionary leasehold interest in all that piece of land known as Land Reference No. 209/14036 to them. The Respondent opposed the motion stating that the orders sought are not incorporated in the Plaintiff and the judgement thus not enforceable.
18. A cursory look at the Plaintiff dated 17th October 2012 which is highlighted in the judgement delivered shows the orders sought for, among them

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- d. A mandatory Injunction be issued to compel the Defendant by itself ,its servants and/or its officials to transfer the reversionary interest to the Plaintiff.
- e. A mandatory Injunction be issued to compel the Defendant to hand over the following documents to the Plaintiff;-
 - a. The original certificate of incorporation of the Plaintiff
 - b. Memorandum and articles of association relating to the Plaintiff
 - c. Company seal belonging to the Plaintiff
 - d. Original certificate of title relating LR.No 209/14036
 - e. Original building plans and
 - f. Originals of all the thirty (30) share certificates relating to the apartments on the suit property.

.....”

19. It is discernible from the judgement that the Plaintiff/Applicant was found to have proved its case on a balance of probability and was granted the said orders. Thus, the orders being sought were incorporated in the judgement thus enforceable. In the upshot, the Applicant’s Notice of Motion is merited and is allowed as presented.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH OF JULY, 2024.



A. OMOLLO
JUDGE

