



Parekh & another (Suing as the Personal Representative of the Estate of the Harshadrai Manilal Parekh) v Access Bank (Kenya) PLC (Formerly Trans National Bank Limited) & another (Environment & Land Case E324 of 2022) [2023] KEELC 815 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 815 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E324 OF 2022
OA ANGOTE, J
FEBRUARY 9, 2023**

BETWEEN

**HASMUKHRAI MANILAL PAREKH 1ST APPLICANT
RAMESH MANILAL PAREKH 2ND APPLICANT
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
HARSHADRAI MANILAL PAREKH**

AND

**ACCESS BANK (KENYA) PLC (FORMERLY TRANS NATIONAL BANK
LIMITED) 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT**

RULING

1. In the notice of motion dated September 29, 2022, the plaintiff has prayed for the following reliefs:
 - a) That this honourable court be pleased to issue declaratory order that the caveat number IR 36722/2 registered over the property known as LR No 1870/I/394, IR 36722 in favour of Trans National Bank Limited is null and void, fraudulent and illegal.
 - b) That this honourable court be pleased to grant a mandatory injunction compelling the 1st defendant/respondent to withdraw the caveat number IR 36722/2 registered over the property known as LR No 1870/I/394 IR 36722 in favour of Trans National Bank Limited.



- c) That this honourable court be pleased to grant a mandatory injunction compelling the 1st defendant/respondent to release the original certificate of title LR No 1870/I/394, IR 36722 to the plaintiffs/applicants.
 - d) That this honourable court be pleased to issue an order that in default of the 1st defendant failure to withdraw the caveat number IR 36722/2 registered over the property known as LR No 1870/I/394 that the 2nd defendant/respondent do remove the caveat lodged on the parcel as entry number 2.
 - e) That this honourable court be pleased to issue an order that the 2nd defendant do deregister the caveat registered as entry number 2 on the encumbrance section of the title known as LR No 1870/I/394, IR 36722.
 - f) That the costs of this application be provided for by the respondents.
 - g) That this honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of the case.
2. The application is supported by the affidavit of the 1st plaintiff who deposed that he is an executor of the estate of the deceased, Harshadrai Manilal Parekh and that the deceased is the registered proprietor of property known as land reference number 1870/I/394 (original number 1870/I/145/5) (the suit property).
 3. It was deponed that in 1996, the 1st defendant, formerly Trans National Bank Limited, demanded the deceased to release the original certificate of the suit property to hold as security for an overdraft facility of Kshs 15,000,000 and that no agreement was executed between the deceased and the bank expressing the intentions of the deceased to charge the suit property, neither was there a charge document executed between the deceased and the bank.
 4. It was deponed that despite having no legal interest in the deceased's property, on February 20, 1996, the 1st defendant fraudulently registered a caveat absolutely against the title LR No 1870/I/394 and that in 2005, the 1st defendant filed a suit against the deceased's company, Global Travel Limited, in Commercial & Tax division civil case No 91 of 2005 for recovery of Kshs 12,591, 088.80.
 5. The 1st plaintiff deponed that in a judgment delivered on June 4, 2021, it was held that the undated guarantee was flawed and was not binding on the deceased and his co-directors and that despite the said judgment, the 1st defendant fraudulently, illegally and unconstitutionally continues to hold the original certificate of title and maintain the caveat to the detriment of the estate of the deceased.
 6. It was lastly deponed that it is of great importance that the 1st defendant releases the original certificate of title since the leasehold which is for a term of 45 years and 7 months expires on 1st June, 2023 and that the plaintiff need to apply for the extension of the lease facility of which the suit property shall revert to the state and the estate shall suffer irreparably. Although the defendants were served with the application on October 12, 2022, they did not file a response to the application. The application is therefore not opposed.
 7. I have perused the copy of the certificate of title for LR No 1870/I/394. The same was registered in favour of the deceased, Harshadrai Manilal Parekh, on June 9, 1982 for a term of 45 years 7 months with effect from November 1, 1977. As correctly submitted by the plaintiffs, the lease shall lapse this year [2023].



8. The only entry in the certificate of title is a caveat by the defendant's predecessor, Trans National Bank Limited, claiming chargees interest "as per the attached correspondence absolute." None of the correspondence by the chargee has been produced in this court.
9. The court has also perused the judgment in High Court Commercial and Tax Division civil case No 91 of 2005. In the said case, the 1st defendant's predecessor, Transnational Bank Limited, sued Global Travel Limited, the deceased and his co-director claiming for judgment of Kshs 12,591.0888.80 together with interest at 36% per annum from November 1, 1995 until payment in full. The High Court in a judgment dated June 4, 2021 dismissed the suit as against the deceased and his co-director.
10. Considering that the defendants have not opposed the application, nor placed any material before this court showing that the suit property was charged or that the deceased was indebted to the 1st defendant or its predecessor to entitle the 1st defendant to hold lien over the certificate of title, it is the finding of this court that the application is merited.
11. For those reasons, I allow the application dated September 29, 2022 as follows:
 - a) A mandatory injunction be and is hereby issued compelling the 1st defendant/respondent to withdraw the caveat number IR 36722/2 registered over the property known as LR No 1870/I/394 IR 36722 in favour of Trans National Bank Limited.
 - b) A mandatory injunction be and is hereby issued compelling the 1st defendant/respondent to release the original certificate of title for LR No 1870/I/394, IR 36722 to the plaintiffs/applicants.
 - c) An order be and is hereby issued that in default of the 1st defendant to withdraw the caveat number IR 36722/2 registered over the property known as LR No 1870/I/394 within 14 days of the date hereof, the 2nd defendant/respondent do remove the caveat lodged on the parcel of land as entry number 2.
 - d) The 2nd defendant do deregister the caveat registered as entry number 2 on the encumbrance section of the title known as LR No 1870/I/394, IR 36722.
 - e) That the costs of this application be provided for by the 1st defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY, 2023.

O. A. ANGOTE

JUDGE

In the presence of;

No appearance for Plaintiff

No appearance for Defendant*

Court Assistant - June

