



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 118 OF 2017

MARA NORTH HOLDINGS LIMITED.....PLAINTIFF

-VERSUS-

SARUNI KALAMET SENGENY.....1ST DEFENDANT

ZHONGEA ASIA AFRICA HOTELS CO LTD.....2ND DEFENDANT

THE DISTRICT LANDS REGISTRAR, NAROK COUNTY.....3RD DEFENDANT

JUDGEMENT

By a plaint dated 14th April, 2015 the Plaintiff sought for the following orders: -

- a. A permanent injunction restraining the 1st and 2nd defendants whether by themselves, agents, servants or otherwise howsoever from selling, leasing, charging or in any manner encumbering parcel number Cis-Mara/Koiyaki/Dagurugurueti/3702 and Cis Mara/Koiyaki/Dagurugurueti/3703 sub divided from parcel Number Cis Mara/Koiyaki/Dagurugurueti/244 situated within Narok County.
- b. A declaration that the surrender of lease dated 4th April, 2013 in respect of the lease dated 20th March, 2012 over Cis Mara/Koiyaki/Dagurugurueti/244 is uncontractual, fraudulent, illegal and therefore null and void.
- c. A declaration that the sub-division of parcel Cis Mara/Koiyaki/Dagurugurueti/244 into parcels Cis mara/Koiyaki/Dagurugurueti/3702 and Cis Mara/Koiyaki/Dagurugurueti/3703 is uncontractual, fraudulent, illegal and therefore null and void.
- d. An order of mandatory injunction compelling the 3rd defendant to rescind and/or reverse the registration of the surrender of lease dated 4th April, 2013.
- e. An order of mandatory injunction compelling the 3rd defendant to rescind and/or reverse the sub division of parcel number Cis Mara/Koiyaki/Dagurugurueti/244 into parcels Cis Mara/Koiyaki/Dagurugurueti/3702 and Cis Mara/Koiyaki/Dagurugurueti/3703.
- f. A declaration that the Land Board Consent issued in respect of the transfer of parcel Cis Mara/Koiyaki/Dagurugurueti/3702 from the 1st Defendant to the 2nd Defendant is illegal and therefore null and void.
- g. A declaration that the Plaintiff's registered lease dated 20th March, 2012 over parcel number Cis Mara/Koiyaki/Dagurugurueti/244 is legally valid and in force.
- h. Mense profits against the Defendants form the date of illegal surrender of lease till payment in full.
- i. Costs of this suit jointly and severally against the Defendants
- j. Any such other or further relief as the court may deem fit to grant.

The genesis of the suit herein as spelt out in paragraph 4 of the plaint is that the plaintiff had leased the land parcel Cis

Mara/Koiyaki/Dagurugurueti/244 for a term of 13 years and 4 months on the 20/3/2012 and the same was registered in Narok Lands Registry. It is the plaintiff's contention that he had met the obligations under the aforesaid lease. However, in April, 2013 the Defendants prepared a surrender of lease in respect of suit land and thus caused the removal of his lease causing the land to be sub divided into Cis Mara/Koiyaki/Dagurugurueti/3703 registered in the name of the 1st Defendant and Cis Mara/Koiyaki/Dagurugurueti/3702 which was registered in the name of the 2nd Respondent.

It is the plaintiff's further contention that the 2nd defendant are of Chinese nationality and thus could not have obtained consent to lease the land registered in its name and thus the entire surrender of the lease, sub divisions and transfer were all done fraudulently.

The 1st defendant filed a memorandum of appearance on 29/6/2015 but never filed a defence. The 2nd and 3rd defendant never entered a memorandum of appearance or filed a defence and therefore the suit herein proceeded ex parte in the absence of the defendant.

Since the evidence of the plaintiff is not controverted I find that the plaintiffs have proved their case on a balance of probabilities and I therefore enter judgement for the plaintiff against the defendant in the following terms: -

- a. A permanent injunction do issue restraining the 1st and 2nd defendants whether by themselves, agents, servants or otherwise howsoever from selling, leasing, charging or in any manner encumbering parcel number Cis-Mara/Koiyaki/Dagurugurueti/3702 and Cis Mara/Koiyaki/Dagurugurueti/3703 sub divided from parcel Number Cis Mara/Koiyaki/Dagurugurueti/244 situated within Narok County.
- b. A declaration is hereby issued that the surrender of lease dated 4th April, 2013 in respect of the lease dated 20th March, 2012 over Cis Mara/Koiyaki/Dagurugurueti/244 is uncontractual, fraudulent, illegal and therefore null and void.
- c. A declaration is hereby issued that the sub-division of parcel Cis Mara/Koiyaki/Dagurugurueti/244 into parcels Cis Mara/Koiyaki/Dagurugurueti/3702 and Cis Mara/Koiyaki/Dagurugurueti/3703 is uncontractual, fraudulent, illegal and therefore null and void.
- d. An order of mandatory injunction do issue compelling the 3rd defendant to rescind and/or reverse the registration of the surrender of lease dated 4th April, 2013.
- e. An order of mandatory injunction do issue compelling the 3rd defendant to rescind and/or reverse the sub division of parcel number Cis Mara/Koiyaki/Dagurugurueti/244 into parcels Cis Mara/Koiyaki/Dagurugurueti/3702 and Cis Mara/Koiyaki/Dagurugurueti/3703.
- f. A declaration is hereby issued that the Land Board Consent issued in respect of the transfer of parcel Cis Mara/Koiyaki/Dagurugurueti/3702 from the 1st Defendant to the 2nd Defendant is illegal and therefore null and void.
- g. A declaration is hereby issued that the Plaintiff's registered lease dated 20th March, 2012 over parcel number Cis Mara/Koiyaki/Dagurugurueti/244 is legally valid and in force.
- h. Costs of the suit jointly and severally be on the defendants.

Since the plaintiff has not proved any evidence on loss I will not grant an order of mesne profit.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **10TH** day of **MARCH, 2020**.

Mohammed Kullow

Judge

10/3/2020

In the presence of:

CA:Chuma/Kimiriny

N/A for parties and advocates