



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
HIGH COURT CIVIL SUIT NO. 1681 OF 2002

NANCY CHERONO KOROS.....1ST PLAINTIFF
MARY BUNEI.....2ND PLAINTIFF
LILA CHELANGAT.....3RD PLAINTIFF

VERSUS

THE PRESBYTERIAN FOUNDATION1ST DEFENDANT
REV. (MRS) JANE KARSHODA.....2ND DEFENDANT
REV. PATRICK M. RUKENYA.....3RD DEFENDANT

JUDGMENT

Introduction

This suit commenced in 2002 by a Complaint dated 8th November 2002 as Amended on 18th December 2002 in which the Plaintiffs herein who were suing in their capacity as officials and trustees of Woo-Kobor Women Group and claim that at all material times herein the said Woo-Kobor Group was the registered owner of the parcels of land known as L.R. 1159/289 and L.R. 1159/290 in Nairobi. Further, that the said parcels of land were allocated to the said Woo-Kobor Women Group by the City Council of Nairobi with the due approval of Commissioner of Lands on 3rd September 1996, for purposes of putting up a children's home. The Plaintiffs claim that pursuant to the said allocation, Woo-Kobor Women Group took possession of the same and embarked on the necessary process towards obtaining the requisite title.

The Plaintiffs further claim that on or about 6th November 2002, the Defendants wrongfully, illegally and forcefully entered into the said parcels of land and commenced construction thereon. Further, that despite the Plaintiffs' attempts to have the Defendants desist from construction and occupation of the plots, the Defendants have refused, failed and/or neglected to do so. The Plaintiffs accordingly sought the following orders from this court:

- a. An injunction restraining the Defendants by themselves, their agents and/or servants from trespassing, into and/or in any way dealing with plots number L.R No. 1159/289 – Nairobi and L.R No. 1159/290 – Nairobi.
- b. Costs of the suit

- c. Interest on (a) and (b) above at the court rates.

The Defendants' response is in an Amended Defence and Counterclaim dated 12th July 2011, in which they denied the Plaintiffs' averments and stated that the Plaintiffs are not a body corporate with perpetual succession that can own, hold or have vested in it any property let alone land. Further, that the Defendants had conducted searches under the Registered Land Act, The Registration of Titles, and the Government Lands Act and that they had not found any land known as L.R. 1159/289 of L.R. 1159/290 that is registered in the name of Woo-Kobor Women Group, either at the date the suit was filed on 8th November 2002, or before that date.

The Defendants in their counterclaim argued that the Plaintiffs have fraudulently represented themselves to be owners of the land from which they have used the police force to evict the 1st Defendant and her agents. They gave the particulars of misrepresentation and fraud on the part of the Plaintiff. Further, that the Defendants as officials of the Presbyterian Church in East Africa were aware that their church was negotiating with the City Council of Nairobi to be allocated L.R No. 1159/70/R on to which the Church was allowed into possession and continued development as of 1st November 2002.

However, that due to the Plaintiffs' actions the planned development stalled, and caused the church loss of over Kshs.500,000.00 in material and labour as well as loss of donor support for the church project that was scheduled to be completed by 30th November 2002. The 2nd and 3rd Defendants also state that they were wrongly sued in that neither of them is the trustee or an authorized holder of immovable property of the Presbyterian Church of East Africa.

The Defendants sought the following orders in their counterclaim:

- a. The Plaintiffs' Amended Plaintiff be struck out and the suit be dismissed.
- b. An order that the Plaintiffs' suit contravened Order 1 Rules 8 and 12 of the Civil Procedure Rules and the Defendants are non-suited on the proceedings commenced by the Plaintiff dated 8th November 2002 and continued by the Amended Plaintiff of 18th December 2002.
- c. A declaration that the Woo-Kobor Women Group is not a legal entity capable of holding property for which it can claim orders in trespass.
- d. A declaration that the Plaintiffs jointly, severally or as Woo-Kobor Women Group did not own any property known as L.R 1159/289 Nairobi and L.R no. 1159/290 Nairobi, either at 8th November 2002, the date the Plaintiffs suit was filed, or at any other time.
- e. Damages for a wrongful suit, wrongful injunction, loss of use and quiet enjoyment of land and compensation for the said injunction and reconstruction in the spirit of section 64 of the Civil Procedure Act and section 75 of the Constitution.
- f. Damages for fraudulent misrepresentation.

The pretrial conference for the hearing of the suit herein and Defendants' Counterclaim was held on 17th June 2013, and the Plaintiffs not having complied with the provisions of Order 11 of the Civil Procedure Rules were given the last opportunity to file and serve their list and bundle of documents and witness statements within 30 days. The Plaintiff had not complied by the date of the hearing the suit on 26th November 2013, neither did their Advocate appear for the hearing.

The Evidence

The Plaintiffs did not appear or adduce any evidence, and the court proceeded to hear the Defendants' counterclaim. The Defendants called one witness, Josphat Thuo Githachuri (DW1) who testified that he is a businessman and an elder of the Presbyterian Church of East Africa, Karen Parish. Further, that the 1st Defendant, the Presbyterian Foundation, has a title to LR. No. 1159/365 issued to it on 27th February 2006, and that the Presbyterian Foundation is the trustee of all properties owned by the Presbyterian Churches of East Africa. DW1 produced the original title to LR. No. 1159/365, a copy of which was also in their bundle of documents. He stated and it was also observed by the court that the said title was

burnt. DW1 explained that the title was burnt in a fire accident, and he produced the police abstract of the fire accident

DW1 gave a history of the allocation to the 1st Defendant of the said land, and stated that the Presbyterian Church of East Africa, Karen Parish identified the said land as having been reserved as a church plot, and applied to the Nairobi City Council in a letter dated on 5th March 2002 which was in the Defendants' bundle of documents. DW1 referred the court to the Nairobi City Council's response dated 6th May 2012 allocating the Presbyterian Church of East Africa the said land, and their acceptance in a letter dated 24th June 2002 which enclosed a bankers cheque for Kshs.352,500/= being payment of the stand premium and ground rent. A copy of the bankers cheque was also produced as evidence in the Defendants' bundle of documents. DW1 also referred the court to the copies of receipts issued to the Presbyterian Church of East Africa by the Nairobi City Council.

DW1 testified that when the Presbyterian Church of East Africa applied for the plot, the letter of offer indicated they had been allotted LR 1159/7/R. which at the time did not have title. Further, that when they were issued with title the plot was renamed as LR 1159/365. He stated that the title has not been challenged by anyone in court, and that nobody other than the Defendants are in possession of the plot.

DW1 further testified that the Defendants had started to develop the property by putting up a foundation, fence and gate in 2002, and intended to start the church in December 2002. However, that they were unable to proceed because an injunction was issued to the Plaintiffs. He stated that they lost building materials and illegal destruction of their structures on the land. DW1 produced the Defendants' bundle of documents as the Defendants' Exhibit 1, and asked that his witness statement dated and signed 4th June 2013 be admitted as part of his evidence.

The issues and Determination

1. Whether the Plaintiffs are entitled to the reliefs sought in their Amended Pleint.

The Plaintiffs did not bring any evidence of their title to the parcels of land known as L.R No. 1159/289 Nairobi and L.R No. 1159/290 Nairobi which they claim to have been allocated by the City Council of Nairobi. There is thus no evidence before this court to show the existence of the said parcels of land, or of their ownership by the Plaintiffs. The Defendants claim that the said parcels of land were allocated to the 1st Defendant, and have brought evidence of the 1st Defendant's title to the said land which they state is LR 1159/365.

I am in this respect also guided by the Court of Appeal's decision in **Wreck Motor Enterprises v The Commissioner of Lands & Others, Nairobi Civil Appeal No. 71 of 1997** that the title of a bona-fide purchaser for value without notice takes precedence and is supreme over all other alleged equitable rights to the title and gets the benefit of sanctity in the absence of fraud or misrepresentation. It is my finding that the Plaintiffs are not entitled to any declaration of ownership of the parcels of land known as L.R No. 1159/289 Nairobi, L.R No. 1159/290 Nairobi and /or LR 1159/365, nor to any of the consequential orders they have sought for the foregoing reasons. The Plaintiffs' suit is accordingly hereby dismissed.

2. Whether the Defendants are entitled to the reliefs sought in their Counterclaim

The Defendants sought various declarations as to the legal status of the Plaintiffs and the Plaintiffs' ownership of the parcels of land known as L.R No. 1159/289 Nairobi and L.R No. 1159/290 Nairobi. The Defendants also sought damages for wrongful suit, wrongful injunction, loss of use and quiet enjoyment of land and fraudulent misrepresentation. The Defendants did not bring any evidence on the legal status of the Plaintiffs and are therefore not entitled to any orders in this regard. On the prayers sought as to the Plaintiffs' ownership of the parcels of land known as L.R No. 1159/289 Nairobi and L.R No. 1159/290 Nairobi, this court has already made findings in this regard and dismissed the Plaintiffs' suit.

With respect to the prayer for damages, the Defendants averred that they were prevented from

proceedings with the development of the suit property and that they lost building materials that were on the suit property. No evidence of the value of the said building materials stated in the Defendants' pleadings to be over Ksh 500,000/= was provided, and it is trite law that such special damage should not only be pleaded but also strictly proved. This court cannot therefore grant the Defendants the special damages sought.

As regards the prayer for general damages, the Defendants brought evidence of the 1st Defendant's title to LR 1159/365, and this court therefore finds that the 1st Defendant is the legal owner of the suit property. Being such legal owner, the 1st Defendant is entitled to general damages for damage or loss caused to the said property in terms of the diminution in value of the land, or cost of reinstatement of the land. However, no evidence of valuation of the property before and after the possession of the suit property by the Plaintiff was brought by the Defendant, nor of the loss incurred as a result of their being prevented to develop the said property value of developments on the property.

In the circumstances this court has no basis to determine the measure of general damages to be awarded, and can only grant nominal damages for the interruption by the Plaintiffs of the 1st Defendants' possession of its property.

(c) Which party is liable to pay the costs of the suit

Lastly, on the issue of costs of the suit, the applicable law is found in section 27 (1) of the Civil Procedure Act (Cap. 21) which provides that costs largely follow the event, and the court is given discretion to determine which party will meet the costs and to what extent. The Defendants are accordingly entitled to the costs of this suit, since this Court has reached conclusions that are in their favour in the findings hereinabove.

Arising from the above-stated findings and reasons, this Court enters judgment for the Defendants as against the Plaintiffs as follows:

1. That the 1st Defendant herein, the Presbyterian Foundation is hereby declared to be the legal owner and proprietor of the property known LR. No. 1159/365 situated in Nairobi.
2. The 1st Defendant is awarded nominal damages of Kshs 50,000/= as against the Plaintiffs for trespass on the property known as LR. No. 1159/365.
3. The Plaintiffs shall jointly and severally pay the Defendants the costs of this suit.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this ____4th____ day of

____March____, 2014.

P. NYAMWEYA

JUDGE