



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 322 OF 2019

JITESHKUMAR SHANTILAL

DEVCHAND HARIA.....1 ST PLAINTIFF

RITA JITESHKUMAR HARIA.....2ND PLAINTIFF

KARIM RAMANZALI KARMALI.....3RD PLAINTIFF

NARMEEN KARIM KARMALI.....4TH PLAINTIFF

=VERSUS=

WOODLEY INVESTMENTS LIMITED.....1 ST DEFENDANT

GREENLEAF MANAGEMENT LIMITED.....2 ND DEFENDANT

JUDGMENT

1. The plaintiffs are the registered lessees of four out of five (5) maisonettes, namely Maisonettes Nos 1, 2, 3, and 4 erected on **Land Reference Number 209/2251/1**. Besides the five maisonettes, there is also a residential dwelling erected on the same piece of land. The term of the mother title on which the properties stand was 45 years from 1/1/1975. The said term was due to expire on 1/1/2020. The mother title was at all material times registered in the name of the 1st defendant. The 2nd defendant was the management company of the estate comprising of the five maisonettes and residential dwelling.

2. Through a plaint dated 2/10/2019 and filed in court on 3/10/2019, the plaintiffs contended that the 1st defendant was obligated under the leases to operationalize the management company; admit the plaintiffs as shareholders in the management company; and procure conveyance of the reversionary interest in the mother title into the name of the management company. They added that the 1st defendant had failed to discharge the above obligations, thereby making it impossible for them to procure an extension of the leasehold interest in the mother title. Further, they contended that their search at the Companies Registry had revealed that the 2nd defendant did not exist in the Register of Companies.

3. Consequently, the plaintiffs sought the following verbatim orders:

a) Specific performance of the agreements of sale and leases entered into between the plaintiffs and their predecessors on the one hand and either or both of the defendants on the other hand by:

i. Forthwith granting the plaintiff membership in the 2nd defendant; and

ii. The 1st defendant forthwith granting the plaintiffs as members of the 2nd defendant or of any other limited liability company the reversion of the last three days in the unexpired term of the lease held by the 1st defendant in Land Reference Number 209/2251/1.

b) Damages in lieu of or in addition to specific performance in the sum of the current value of the maisonettes numbers 1,2,3 and 4 erected on Land Reference Number 209/2251/1.

c) Interest on b above.

d) *Costs.*

e) *Any other or further relief.*

4. The defendants were served with summons and hearing notice through a notice in the Standard Newspaper Edition of 18/10/2019. They neither entered appearance nor filed defence. Consequently, on 5/11/2019 the court granted the prayers sought in the notice of motion dated 2/10/2019. Given that the term of the mother title was due to expire on 1/1/2020, the court deemed it necessary to grant the plaintiffs an interlocutory mandatory injunction to facilitate processing of the application for renewal of the term.

5. The plaintiffs led evidence by two witnesses. Jiteshkumar Shantilal Devchand Haria (**1st plaintiff**) testified as PW1. He adopted his witness statement dated 2/10/2019 as part of his evidence-in-chief. His testimony was that, together with his wife (2nd plaintiff), they entered into an agreement with the 1st defendant, pursuant to which they purchased Maisonette Number 4 erected on Land Reference Number 209/2251/1. The leasehold interest in the mother title was for 45 years from /1975 less the last three days. They subsequently entered into a lease relating to Maisonette Number 4. It was a term of the lease that each maisonette owner would be granted proportionate shareholding in the management company (2nd defendant). It was also a term of the lease that the reversionary interest in the mother title would be conveyed to the management company.

6. PW1 added that the following steps were provided for or envisaged in the sale agreements and leases relating to the maisonettes: (i) grant of membership to the proprietors of the maisonettes in the management company; (ii) conveyance of the reversionary interest in LR No 209/2251/1 to the management company; and (iii) application for renewal of the leasehold interest in the mother title by the management company. He stated that the plaintiffs would be unable to pursue the extension of the lease unless the above steps were taken. PW1 added that without court intervention, the plaintiffs stood to lose their properties. He urged the court to grant the prayers sought in the plaint.

7. Mr Karim Ramzanali Karmali (**3rd plaintiff**) testified as PW1. He adopted his written statement dated 2/10/2019. He stated that he owned Maisonette Number 2 while his wife (**4th plaintiff**) owned Maisonette Numbers 1 and 3, all erected on Land Reference Number 209/2251/1. His testimony was largely the same as PW1's testimony.

8. Mr Tugee, counsel for the plaintiffs made brief oral submissions. He submitted that the dispute in this suit was about contractual obligations of the parties. He submitted that since the defendants had failed to defend the suit, the plaintiffs should be allowed to take over the 2nd defendant or set up a new company.

9. I have considered the pleadings and evidence in this matter. I have also considered the relevant law. The suit is undefended. The only question falling for determination is whether the plaintiffs have proved their case on a balance of probabilities.

10. The dispute in this suit relates to the conveyance of the reversionary interest in **Land Reference Number 209/2251/1**. The plaintiffs' case is that they own four maisonettes on the said piece of land. Under their respective leases, they were entitled to the reversionary interest in the mother title through membership in the management company. Upon selling their maisonettes, the 1st defendant failed to convey the reversionary interest in the mother title. The defendant similarly failed to procure an extension of the lease in the mother title. This exposed the plaintiffs to the danger of losing their investments on the suit property. Consequently, they sought court intervention.

11. In the absence of a defence, and based on the above evidence, the court is satisfied that the plaintiffs have proved their case on a balance of probabilities. Consequently, the court grants the plaintiffs the following orders:

(a) An order is hereby issued compelling the 1st defendant to operationalize the 2nd defendant; grant the plaintiffs proportionate shareholding in the 2nd defendant; and convey the reversionary interest in Land Reference Number 209/2251/1 to the 2nd defendant.

(b) In the alternative to (a) above, the plaintiffs shall be at liberty to incorporate a new management company; grant all proprietors of properties developed on Land Reference Number 209/2251/1 proportionate shareholding in the new management company; complete processing renewal of the lease contained in the mother title; and cause the leasehold interest in the mother title to be conveyed to the new management company.

(c) The Deputy Registrar of this Court is hereby authorized to execute all necessary instruments required to be executed by both or either of the defendants herein.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF OCTOBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Mr. Tugee for the Plaintiffs

Court Clerk - June Nafula

Note

This Judgment was supposed to be delivered on 3/11/2020. This was not possible because I was assigned duties outside the Station.

B M EBOSO

JUDGE