



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
Civil Case 819 of 2008

HONG KONG RESTAURANT LIMITED1ST APPLICANT
ARGKOD FLATS MANAGEMENT LIMITED.....2ND APPLICANT
AND
PABCO INVESTMENTS LIMITED.....RESPONDENT

J U D G M E N T

This matter has been brought to court through an originating summons under section 64 of Registration of Titles Act (Cap 281), Laws of Kenya, Section 3A of the Civil Procedure Act (Cap 21), Laws of Kenya, Order XXXVI Rules 3 and 12 of the Civil Procedure Rules and all other enabling provisions of the law. The same seeks the following orders:

- (a) The Respondent herein do execute a transfer of the reversionary Leasehold interest in Land Reference Number 209/382/6 (Original 209/382/5/1) as delineated and described on the building plan registered in Volume D.1 Folio 522/4131 DXXVI in favour of the 2nd Applicant and to register and/or cause the said transfer to be registered in the name of 2nd Applicant within 14 days thereof;
- (b) In default of execution of the said documents by the Respondent, the Honourable Court be pleased to direct the Deputy Registrar of the High Court of Kenya to effect the execute the Transfer of reversionary interest aforesaid to the 2nd Applicant;
- (c) The Registrar of Land be and is hereby directed to register the said reversionary Interest in the name of the 2nd Applicant without the production of the Original Indenture and to effect such other entries in the Register of titles to land as would give effect to the Court's Orders herein; .
- (d) This Honourable Court be pleased to make such other and/or further orders as it may deem expedient herein;
- (e) The costs of this application be borne by the Respondent.

The originating summons is supported by the grounds listed on the same and the supporting affidavit by one Mr. Richard Law who is a Director of the 1st applicant. Consequently, on 3rd February, 2009, the Deputy Registrar of this court entered an interlocutory judgment following a request by the applicants.

Subsequently, on 17th April, 2009 the applicants filed written submissions. The thrust of the same is that by a sale agreement dated 19th August, 1994, the respondent for a consideration of Khs. 2,500,000/- agreed to sell all its beneficial interest in all that property known as Flat No. 12 situate on the second floor of the building erected on L.R. No. 209/382/6 as delineated on the building plan registered in volume D.1 Folio 522/4131 DXXVI (hereinafter referred as to the “suit property”). Following the payment of the entire consideration, the parties executed a Lease agreement dated 21st November, 1994 in Volume N60 Folio 396/1 Fik 19279 and which was duly registered on 25th November, 1994 thus vesting the respondent’s beneficial property to the applicant. In their written submissions, the applicants have also argued that under the sale and Lease agreements the respondent would transfer the reversionary interest in the suit property to the second applicant and its refusal to sign the transfer of the said reversionary interest is in clear breach of contract to which the respondent cannot adequately or reasonably defend. Besides the above, the applicants have also submitted that the respondent has further refused and/or neglected to render available the original indenture dated 21st December, 1973 to the applicants in order to enable them to register the reversionary interest in the suit property on behalf of the 2nd Applicant. Apart from the above, the applicants has also pointed out that though the respondent was duly served with the applicant’s originating summons dated 25th September, 2008, they never entered appearance therefore prompting their chamber summons application dated 25th November, 2008 seeking the court’s orders for substituted service of the said originating summon on the respondent. Despite the above, the respondent still failed to enter appearance and the applicants then sought to enter judgment against the respondent. Eventually, judgment was so entered by the Deputy Registrar on the 3rd February, 2009. According to the applicants the issues in this cause are uncontroverted and unchallenged by the respondent who has by his own negligence and/or recklessness failed to defend itself in this suit and hence they should be granted the orders as sought in the originating summons. In conclusion, the applicants has urged the court to compel the respondent to sign the transfer as per the contract as he has shown a great and deliberate willingness to flout its obligations, that it entered freely, under the sale and lease agreements.

This court has carefully considered the originating summons together with the applicant’s written submissions. Needless to state, though the respondent was duly served, he has never entered any appearance nor opposed the originating summons in any manner. That means that the pleadings are unchallenged and uncontroverted. I am satisfied that the applicants have proved their case on a balance of probabilities. The upshot is that I hereby enter final judgment in favour of the applicants on the following terms.

- (a) The Respondent herein do execute a transfer of the reversionary Leasehold interest in Land Reference Number 209/382/6 (Original 209/382/5/1) as delineated and described on the building plan registered in Volume D.1 Folio 522/4131 DXXVI in favour of the 2nd Applicant and to register and/or cause the said transfer to be registered in the name of 2nd Applicant within 14 days thereof;
- (b) In default of execution of the said documents by the Respondent, the Deputy Registrar of the High Court of Kenya to effect the execute the Transfer of reversionary interest aforesaid to the 2nd Applicant;
- (c) The Registrar of Land be and is hereby directed to register the said reversionary Interest in the name of the 2nd Applicant without the production of the Original Indenture and to effect such other entries in the Register of titles to land as would give effect to the Court’s Orders herein; .
- (d) The costs of this application be borne by the Respondent.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open court in the presence of:

Mr. Kuyo for Applicants

N/A for Respondent

MUGA APONDI

JUDGE

5TH NOVEMBER, 2009