



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 74 OF 2019

- 1. RABINDRA PROSONNO KUMAR MITTRA**
- 2. ECO BANK KENYA LIMITED**
- 3. BHIKHUBAI RAMJI GHEDIA**
- 4. DAWOOD KHAN PATHAN**
- 5. AZIM A. FAZAL**
- 6. KANTILAL TULSIDAS DHANAK**
- 7. KANUBHAI H. PATEL**
- 8. AMRITLAL VADGAMA**
- 9. SULTANALI HABIB WALJI**
- 10. AHMED ABDUL RAHIM**
- 11. HASMUKH DEVSHI GHEDIA.....PLAINTIFFS**

=VERSUS=

COMMERCIAL INVESTMENT LIMITED.....DEFENDANT

JUDGMENT

This suit was filed in the High Court on 29th October, 2007 through a plaint dated 22nd June, 2007. The same was transferred to this court on 11th February, 2019. The plaintiffs amended the plaint on 14th August, 2015. In their amended plaint, the plaintiffs averred that at all material times, the defendant was the owner of eleven (11) maisonettes that were erected by the defendant on all that parcel of land known as L.R No. 209/6/3 (“the suit property”). The plaintiffs averred that they purchased all the eleven (11) maisonettes from the defendant. The plaintiffs averred that they were each issued with titles in respect of the said maisonettes under the Sectional Properties Act, No. 21 of 1987.

The plaintiffs averred that when they were purchasing the said maisonettes from the defendant, it was agreed that they were purchasing the maisonettes together with the land on which the maisonettes were standing which is the suit property. The plaintiffs averred that it was agreed between the parties that the defendant would transfer its reversionary interest in the suit property to the plaintiffs after selling all the maisonettes.

The plaintiffs averred that after selling all the maisonettes on the suit property, the defendant stopped its operations and its directors and registered office could not be traced. The plaintiffs sought judgment against the defendant for:

1. An order that the reversionary interest in L.R No. 209/6/3, Nairobi do revert to the plaintiffs.
2. An order that the Registrar of the court does execute the instrument of transfer of the reversionary interest to the plaintiffs.
3. Any other or alternative reliefs that the court may deem fit to grant.

The defendant was served with summons to enter appearance but failed to enter appearance. Interlocutory judgment was entered against the defendant on 20th June, 2008 in default of appearance. The matter came up for formal proof on 10th March, 2020 when the 1st plaintiff gave evidence on his own behalf and on behalf of the other plaintiffs. The 1st plaintiff adopted his witness statement filed in court on 12th February, 2015 as his evidence in chief. In his brief oral testimony, the 1st plaintiff reiterated the contents of the amended plaint that I have highlighted herein earlier. The 1st plaintiff stated that the plaintiffs were to be issued with a title in respect of the reversionary interest in the suit property. The 1st plaintiff produced copies of some of the sectional property titles that were issued to some of the plaintiffs as exhibits. He also produced as an exhibit a copy of the certificate of title for the suit property. He stated that the suit property was registered in the name of the defendant and that the defendant was to transfer the same to the plaintiffs. He stated that the defendant did not transfer the suit property to the plaintiffs and that its directors had left the country and could not be traced. The 1st plaintiff urged the court to grant the reliefs sought in the amended plaint.

After the close of the plaintiffs' case, the plaintiffs' advocate told the court that he wished to rely entirely on the evidence on record and urged the court to enter judgment for the plaintiffs as prayed in the amended plaint. I have considered the evidence tendered by the plaintiffs in proof of their claim against the defendant. The issues arising for determination in the suit in my view are the following;

1. Whether there was an agreement between the plaintiffs and the defendant that the defendant would transfer to the plaintiffs L.R No. 209/6/3 ("the suit property").
2. Whether the plaintiffs are entitled to the reliefs sought.
3. Who is liable for the costs of the suit?

The first and second issues:

The plaintiffs' suit was based on an agreement that the plaintiffs allegedly entered into with the defendant to the effect that once the defendant had sold all the maisonettes that the defendant had constructed on the suit property; the defendant would transfer the suit property to the plaintiffs. The plaintiffs did not place before the court copies of the agreement of sale which they or any of them entered into with the defendant. The plaintiffs did not therefore prove the existence of the agreement which was allegedly entered into between the plaintiffs and the defendant for the transfer of the suit property to the plaintiffs. What was placed before the court by the plaintiffs were sectional property titles that were issued to some of them. There is nothing in those titles suggesting that the defendant was to transfer the suit property to the plaintiffs. In fact, there is no reference of any nature to the suit property in the said titles.

There is no dispute that the plaintiffs were issued with sectional property titles. The titles were issued under the Sectional Properties Act, No. 21 of 1987 ("the Act"). The titles gave the plaintiffs proprietorship of the units (Maisonettes) that they purchased and shares in the common areas. Section 17 read with section 27 of the Act provides for the establishment of a corporation by the owners of the units to manage the common areas. I am of the view that the intention of the legislature was to have the common areas in properties under the Act managed by a corporation on behalf of the owners of the units rather than by individual owners of the units. Under Section 27 of the Act, the defendant was supposed to facilitate the formation of a corporation for sectional plan No. 6 on which the plaintiffs' units are situated. Under Section 5 of the Act, upon registration of the said sectional plan, the register for the suit property was supposed to be closed and a register opened for each of the units that were sold to the plaintiffs. This explains why each of the units has a title number. I had asked the advocates for the plaintiffs to submit to the court a search on the title of the suit property. That request was not honoured. I doubt if the suit property would still be in existence after the buildings thereon were brought under the Act and new titles issued for the units. I am of the view that the title for the suit property was closed pursuant to section 5 of the Act upon registration of sectional plan No. 6 that gave rise to the sectional property titles that were issued to the plaintiffs. In the absence of a title for the suit property, I doubt if the defendant could have undertaken to transfer the property to the plaintiffs. As I have stated above, what the defendant was required by law to do what to facilitate the formation of a corporation to manage the common areas for the maisonette owners. The maisonette owners already have titles over the common areas in various shares. This is clear from the titles produced in court. I am of the view that under the Act, there is no reversionary interest. The plaintiffs' titles which are leasehold in nature can be extended on application by the individual owners of the units at the end of the terms thereof. I do not understand why the plaintiffs still wish to be registered as owners of the suit property. What the plaintiffs should do in my view is to form a corporation under section 17 of the Act to manage the common areas of the suit property in which corporation they will all be members. I have said enough to show that there was no agreement between the plaintiffs and the defendant for the transfer of the suit property to the plaintiffs and that there is no basis for the grant of the orders sought by the plaintiffs. The plaintiffs are therefore not entitled to any of the reliefs sought in the amended plaint.

The third issue:

Costs are awarded at the discretion of the court. The suit was not defended and the plaintiffs have also failed to prove their claim. An appropriate order on costs would be for each party to bear its own costs.

Conclusion:

In conclusion, I find no merit in the plaintiffs' claim. The same is dismissed with each party bearing its own cost.

Delivered and Dated at Nairobi this 12th Day of November, 2020

S. OKONG'O

JUDGE

Judgment delivered through Teams Video Conferencing Platform in the presence of:

Mr. Mwangi h/b Mr. Khan for the Plaintiffs

N/A for the Defendant

Ms. Catherine-Court Assistant