



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
CIVIL APPLICATION 60 OF 1997

BETWEEN

DR. JOSEPH N.K. ARAP NG'OK.....APPLICANT

AND

JUSTICE MOIJO OLE KEIWUA

J.L. OLE KIPURY

J.B. MUTURI

COMMISSIONER OF LANDS

MADISON INSURANCE COMPANY KENYA LIMITED.....RESPONDENTS

(An intended Appeal from the Ruling and Order of the High Court of Kenya

at Nairobi (Hon. Mr. Justice Andrew Hayanga) Dated 30th January, 1997

in

H.C.C.C. NO. 3 OF 1997)

RULING OF THE COURT

We have before us an application made under rule 5(2) (b) of the Court of Appeal Rules by which the applicant, Dr. Ng'ok, seeks an order to restrain the sixth (6th) respondent, Madison Insurance Company Kenya Limited, its agents or servants, workmen and/or employees from evicting the applicant from all that piece or parcel of land known as plot L.R. 209/13239 situated in Nairobi (hereinafter referred to as "the suit property") or from interfering with his quiet possession of the suit property or from selling, disposing, charging, transferring, conveying or in any other way alienating the suit property pending the filing hearing and determination of an intended appeal. The proposed or intended appeal is to be against the decision of the superior court (Hayanga J) whereby the learned judge struck out the applicant's suit in the court below.

The facts which are not in dispute are that the applicant wrote a letter dated 28th March, 1995 to the Commissioner of Lands (fifth respondent) seeking to be considered for allocation of suit property to him. This letter bears the words "Approved" with the signature of H.E. President Daniel Arap Moi underneath the same.

What is not shown is the date on which H.E. the President approved the application for consideration for allocation of the suit property. Mr. Otieno-Kajwang who appeared for the applicant argued that the approval by H.E. the President amounted to his client obtaining the title to the suit property. This argument, of course, cannot stand. It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.

The suit property was allocated to second, third and fourth respondents after H.E. the President approved consideration for allocation thereof to the said three respondents. The letter of allotment to these three respondents was issued on 19th December, 1995. This allotment letter was acted upon and the said three respondents were issued with title to the suit property under Registration of Titles Act, Cap. 281. Laws of Kenya (the Act).

Having obtained the registration of the suit property the said three respondents transferred the suit property to Goodwood Properties Limited for a consideration of shs.10,000,000/=. Goodwood Properties Limited transferred the suit property to the sixth respondent at a consideration of shs.25,000,000/=.

For the purposes of this application we are not concerned with the second, third, fourth and fifth respondents as the application seeks orders to restrain the sixth respondent only in terms as already set out by us.

Mr. Kajwang for the applicant conceded that not a single factor was pleaded showing any fraud on the part of the sixth respondent. In such event the sixth respondent is a bona fide purchaser for value without notice.

Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.

As no fraud on part of the sixth respondent, the registered proprietor of the leasehold interest in the suit property, is pleaded, we see no arguable appeal.

It is well settled that in order that this Court can grant an injunction under rule 5(2) (b) of the rules of this Court two requirements are necessary. Firstly, there must be a clearly arguable appeal, and secondly, that the appeal ought not be rendered nugatory in the event of success of the intended appeal. We have already stated that in the absence of any pleading of fraud as against the sixth respondent the proposed appeal against it has no chance of success. Even if the intended appellant (the applicant here) were to succeed he can always obtain vacant possession of the suit Property from the sixth respondent, if assuming the sixth respondent is in possession. But as we see no arguable appeal we need not go at length into the second limb above referred to.

This application is devoid of merit and is therefore dismissed with costs.

Dated and delivered at Nairobi this 17th October, 1997.

P. K. TUNOI

JUDGE OF APPEAL

A. B. SHAH

JUDGE OF APPEAL

G. S. PALL

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR