



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, PALL, J.J.A. & BOSIRE AG. JA

CIVIL APPEAL NO.185 OF 1997

BETWEEN

1.NAIROBI PERMANENT MARKETS SOCIETY

2.SAMWEL KIGO

3.TERESIA NDUKU

4.ROSE OGUTU

5.PATRISIA NJOKI

6.GEORGE OWUOR.....APPELLANTS

7.MARGARET SAMSON

8.TERESIA KAMENE

9.BANITO GWALIAMBA

10.KAMUNYU KIMANI

11.NJOROGE KIBAA

12.HENRY MUHUMBWA

AND

1.SALIMA ENTERPRISES

2.NAIROBI CITY COUNCIL

3.REGISTRAR OF LANDS, NAIROBI.....RESPONDENTS

(Appeal from the ruling of the High Court of Kenya at Nairobi
(Mr Justice Mboghli Msagha) dated 27th March, 1996

in

H.C.C.C. NO. 3623 OF 1995)

JUDGMENT OF THE COURT

By this appeal Nairobi Permanent Markets Society and the above named eleven other appellants (the appellants) have appealed from the order dated 27th March, 1996 made by Mbogholi Msagha, J. in High Court Civil Case No.3623 of 1995 in which the appellants sued Salima Enterprises Ltd, (the company) Nairobi City Council (the Council) and the Registrar of Lands, Nairobi (the Commissioner) on their own behalf and on behalf of some other unnamed stall owners at the Westlands Permanent Market, Nairobi for a declaration which is hereinafter alluded to.

In the plaint it was alleged that the 2nd to 8th appellants were permanent stall owners within the Westlands Permanent City Council Market and the 9th, 10th, 11th and 12th appellants were temporary stall owners in the said market situated on a piece of land known as L.R.1870/45/IX. It is also alleged that the former mentioned appellant and other stall owners in that market are the members of the 1st appellant Society. The Council subdivided the piece of land and allegedly unlawfully leased out a portion thereof namely L.R.1870/IX/170 to the company on a 99 years lease.

It has been further alleged that the said lease is unlawful as the same was not signed by the then Mayor of Nairobi nor did it carry the seal of the Council. It had been also alleged that it was a condition of the Government grant of the said piece of land known as L.R.1870/45/IX that the said land would be used by the Council only for public conveniences, a dwelling house, a covered market and for such other purposes as may be approved by the Commissioner in writing. It was also a condition of the grant, the plaint averred, that the Council would not sell transfer or part with possession of the said land without consent of the Commissioner in writing except for letting of the market stalls on monthly basis. Although the said conditions of the grant had not been met and the lease between the Council and the Company was totally irregular, the Commissioner caused the said lease to be registered, so it is alleged. Consequently the appellants, so it is further alleged, have suffered loss and damage. The appellants prayed for a declaration that the said lease in favour of the company and its subsequent registration was unlawful. They also claimed general damages.

A photostat copy of the lease subject matter of the suit is at page 22 of the record of appeal. It is a lease in favour of the company for a period of 99 years from the 1st day of December, 1965 subject to payment of a yearly rent of Shs.100,000/=. It was registered under the Registration of Titles Act as No.I.R.66597/1 on 9th August, 1995. On 20.12.1995 the learned Judge made an interim order on an interlocutory application of the appellants ordering the parties to maintain status quo with liberty to either side to apply.

On 2.1.1996 the company applied by a chamber summons for review of the said order of 20.12.1995. In support of that application, Francis Karani Elijah, a director of the Company by his affidavit sworn on 29th December 1995, deponed that the company had not been served with any pleading, chamber summons, affidavit or a hearing notice, that he came to know about the proceedings when he saw the appellants trespassing upon the suit land; that the company had a valid registered title and it bought the suit land for 1 million shillings and paid Shs.100,000/= every year as the annual rent, and that the appellant stall owners were evicted on 14.12.1995 by an order of the City Magistrate's Court.

By his ruling made on 27th March, 1996 the learned Judge of the superior court vacated the said earlier order of 20.12.1995. The appellants have appealed from it. There are eight grounds in the memorandum of appeal. However quite a few of them are overlapping and there are one or two grounds which Miss Weru has abandoned. We do not therefore find it necessary to reproduce the grounds. Suffice it to say that the gist of Miss Weru's argument before us was that the suit land was leased out by the Council unlawfully thereby prejudicing the rights of a number of stall holders who were in occupation of that land with the permission of the Council; that the learned Judge erred in holding that the appellants had no locus standi; that the learned Judge also erred in holding that the appellants had failed to establish a prima

facie case and that the Council by selling the suit land to the Company without affording the appellants a hearing had violated the legitimate expectation of the appellants to be treated fairly. The Company purchased the suit land from the Council for valuable consideration and enjoys a registered title in its favour. Miss Weru has not disputed this. The suit land is admittedly under the operation of Registration of Titles Act. Under s.23 of that Act a certificate of title issued by the registrar to any purchaser of land is to be taken by all courts as conclusive evidence that the person named therein as the proprietor of the land is the absolute and indefeasible owner thereof and his title is not subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be a party.

The Company as the registered proprietor of the suit land therefore is the absolute and indefeasible owner thereof. There is no allegation that the Company was a party to any fraud or misrepresentation perpetrated upon the appellants in the acquisition of the suit land. There is no averment in the plaint that the Company had any knowledge or was a party to any irregularity in the transaction. So the Company's rights of ownership cannot be interfered with by the appellants. The Company paid 1 million shillings stand premium and is liable to pay to the Council one hundred thousand shillings as the annual rent. The order of 20.12.1995 ordering the parties to observe status quo was clearly an interference with the Company's rights of ownership and the learned Judge was justified in vacating that order.

If the Council had breached any conditions of the grant, that was a matter between the Commissioner and the Council. The appellants do not have any recourse either against the Council or against the Commissioner, in that respect. Also if the lease in favour of the Company was not properly executed, the appellants cannot base this action upon that irregularity unless of course any legal right or interest enjoyed by them has been prejudiced.

The appellants have not disclosed what right or interest they had in the suit land. In the absence of that they could not expect the court to interfere with the Company's right of ownership by putting a hold on its activity or development of the suit land. We fully agree with the learned trial Judge that in the circumstances the appellants prima facie did not have locus standi to bring the said action for an injunction against the respondents.

The rules of natural justice would apply only where legal right, liberty or interest of an aggrieved party has been affected. We do not therefore agree with Miss Weru that her clients had any right to be heard unless of course they were in a position to establish some right or interest in the suit land which they have failed to do.

We therefore dismiss the appeal with costs.

Dated and delivered at Nairobi this 24th day of October, 1997.

R.S.C. OMOLO

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JUDGE OF APPEAL

G. S. PALL

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JUDGE OF APPEAL

S.E.O. BOSIRE

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Ag. JUDGE OF APPEAL

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

DEPUTY REGISTRAR