

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO.224 OF 2016(O.S)

BEIGE INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

CHIEF LAND REGISTRAR.....1ST DEFENDANT

REGISTRAR OF GOVERNMENT LANDS.....2ND DEFENDANT

NATIONAL LAND COMMISSION.....3RD DEFENDANT

JUDGEMENT

The Plaintiff commenced this suit by way of the Originating Summons dated 2nd March 2016, seeking orders for the removal of the caveat lodged on L.R No. 27/114 (“the Suit Property”) and costs. The suit is based on grounds that there is presently a government caveat registered against the Suit Property placed by the Land Registrar, without giving notice to the Plaintiff.

The application was supported by the Affidavit of one Simon Kagwanja Thuo, a director of the Plaintiff who deponed that the Plaintiff is the registered proprietor of the Suit Property, which it purchased through a loan facility advanced by Equity Bank Limited.

He further deponed that he recently learnt from the Lands Office that there was a government caveat registered against the Suit Property. He deponed that Plaintiff’s counsel wrote to the Ministry of Lands requesting to have the caveat removed. The National Lands Commission responded to the Plaintiff’s counsel on 19/1/2016 admitting that the Registrar of Government Lands placed a caveat on the Suit Property. He annexed a copy of the letter.

The 1st and 2nd Defendants did not enter appearance. The 3rd Defendant entered appearance and appeared in court to seek more time to file its response but failed to do so within the timelines given by the court.

The court has considered the Originating Summons, the Affidavit in support together with the Plaintiff’s written submissions.

This being a suit seeking to lift a caveat, the Plaintiff was expected to place before the court a copy of the caveat complained of, or a certificate of official search conducted on the title of the suit from which the court would have ascertained that indeed the caveat does exist, the date it was lodged and the grounds upon which it was lodged in accordance with Section 116 of the repealed Government Lands Act. There is no evidence that a caveat was registered against the property known as LR NO.27/114. The postal search only shows that a mortgage is registered against this parcel of land.

The letter dated 19/1/2016 confirming the existence of a caveat on the Suit Property is not evidence of a caveat registered against the land. Interest in land must be registered against the title and this is what would be shown on a search done on the land. The suit in its current form is devoid of merit, it is dismissed with no order as to costs.

Dated and delivered at Nairobi this 26th day of February 2019.

K. BOR

JUDGE

In the presence of: -

Ms. C. Serem holding brief for Mr. Mungai for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant