



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO 633 OF 2010

LILAVANTI RAMNIKLAL RAJA.....1ST PLAINTIFF

NALINI NITIN AMLANI.....2ND PLAINTIFF

ARUNKUMAR CHHOTALAL KANTARIA.....3RD PLAINTIFF

(Administrators of the Estate of Ramniklal Hansraj Raja - Deceased)

= VERSUS=

THE COMMISSIONER OF LANDS.....1 ST DEFENDANT

THE KIAMBU DISTRICT LAND REGISTRAR.....2 ND DEFENDANT

JOSEPH WANYONYI NGOSIA.....3 RD DEFENDANT

JUDGMENT

Introduction

1. The plaintiffs brought this suit as joint administrators of the estate of the late Ramniklal Hansraj Raja (the **deceased**) who died domiciled in Kenya on 11/5/2003. The dispute in the suit relates to a piece of land situated in Kikuyu Town, Kiambu County, previously designated as Plot Number **KIKUYU TOWNSHIP UNS BCR PLOT "C"** under Part Development Plan Number PDP KBU/43/2001/1. The piece of land was allocated to the deceased in 2003 following approval of a part-development plan. The plaintiffs contend that about seven years after the death of the deceased, they learnt that the 3rd defendant had procured a lease in the name of the deceased, purportedly executed by the deceased on 7/12/2009, and purportedly registered by the Land Registrar on 7/1/2010. They also discovered that the 3rd defendant had procured a purported transfer of the lease through a transfer instrument purportedly executed by the deceased on 7/12/2009. Consequently, they brought this suit contending that the said lease, transfer and certificate of lease, were all fraudulent documents. They sought the following verbatim orders:

a) An order of injunction restraining the 3rd defendant, whether by himself, his agents, employees, servants and /or otherwise howsoever, from entering, occupying, residing on, remaining on or otherwise claiming title or interest whatsoever in the property known as Kiambu/Kikuyu Township/261 or any part thereof pending the hearing and determination of this suit.

b) A permanent injunction restraining the 3rd defendant whether by himself, his agents, employees, servants and /or otherwise howsoever, from entering, occupying, residing on, remaining on or otherwise claiming title or interest whatsoever in the property known as Kiambu/Kikuyu Township/261 or any part thereof or otherwise interfering with the administration of the Estate of the deceased by the plaintiffs or any of them in relation to the property known as Kiambu/Kikuyu Township/261.

c) An order of injunction restraining the 3rd defendant whether by himself, his agents, employees, servants and /or otherwise howsoever, from selling, disposing off, leasing, charging, pledging, alienating or in any other manner whatsoever dealing with the suit property, entering, Kiambu/Kikuyu Township/261 or any part thereof pending hearing and determination of this suit.

d) That a permanent injunction restraining the 3rd defendant whether by himself, his agents, employees, servants and /or otherwise howsoever, from selling, disposing off, leasing, charging, pledging, alienating or in any other manner whatsoever dealing with the suit property, Kiambu/Kikuyu Township/261 or any part thereof.

e) A declaratory order that the 3rd defendant was wrongfully and unlawfully issued with a certificate of lease to the property known as Kiambu/ Kikuyu Township/261 and is accordingly, a trespasser on the same.

f) An order that the 3rd defendant's purported certificate of lease to the property known as Kiambu/Kikuyu Township/261 be surrendered and cancelled forthwith and the same be expunged from the register.

g) A declaratory order that the deceased was the rightful allottee from the Government of Kenya of the parcel of land known as Kiambu/Kikuyu Township/261.

h) General damages.

i) Costs of this suit together with interest at court rates.

j) Any such other or further relief as this honourable court may deem just and fit to grant.

Plaintiffs' Case

2. The case of the plaintiffs was that the suit property was part of a piece of land which was occupied and developed under the temporary occupation licence (TOL) by the deceased together with three other persons, namely; Daniel Njuguna Nganga, Rahab Wanjiku, and Joseph N Numanyi (the temporary occupants). In 1993, a group of artisans calling itself **Kikuyu Township Jua Kali Artisans** sued the temporary occupants in Kiambu SPMCC No 1497 of 1993 contending that they had been allocated the plot. In a judgment rendered by the court on 1/4/1998, it was held that the temporary occupants were the lawful occupants of the suit property and the artisans had failed to prove their case. Subsequently, the local authority in conjunction with the Department of Physical Planning and Commissioner of Lands prepared a part-development plan in which the land was divided into four plots identified as Plot Numbers A, B, C and D. The four individuals who occupied the land under a temporary occupation licence were allocated each of the four plots. The deceased was allocated Plot Number C. The formal letter of allotment was issued on 27/5/2003, sixteen days after the death of the deceased.

3. The plaintiffs further contended that the lease and transfer purported to have been executed by the deceased in 2009 were forgeries because the deceased had died six years prior to that and could not have executed the lease and transfer in 2009.

Case of the 1st and 2nd Defendants

4. The case of the 1st and 2nd defendants was contained in their joint statement of defence dated 26/11/2013 and filed on 8/1/2014. They admitted that the Department of Physical Planning prepared a part- development plan and invited the public to raise objection. They contended that they were strangers to the plaintiff's claim as pleaded in the plaint. They further contended that they were to seek indemnification from the 3rd defendant in the event that they were adjudged liable.

3rd Defendant's Case

5. The case of the 3rd defendant was contained in his statement of defence dated 8/2/2011 and filed on 22/2/2011. It differed with the evidence which the 3rd defendant subsequently led at the hearing. At paragraph 3 of the defence, the 3rd defendant denied the allegation that the deceased was an allottee or owner of the suit property. The 3rd defendant did not make any mention of a purported purchase of the suit property from the deceased in the defence. However, in his subsequent evidence in court, he changed his case and stated that the deceased was a lawful allottee of the suit property and that the deceased had sold the suit property to him prior to his death.

Evidence by the Plaintiffs

6. Nalini Nitin Amlani testified as PW 1. She adopted her written statement dated 25/5/2016 as part of her sworn-evidence-in-chief. She stated that she was a daughter of the deceased and a joint administrator of the deceased's estate. She testified that her late father was the owner of the suit property and had never sold it. She stated that her late father's business was run by one Mustafa Bhaji who received the original letter of allotment and who was delegated to make payments on behalf of her deceased father's estate. She further testified that she was familiar with her late father's signature and added that the signatures on the lease and transfer of lease did not belong to her late father. She added that there was fraud in the procurement of the purported registration of the lease and transfer of lease and in the purported issuance of the certificate of lease held by the 3rd defendant. She produced 16 exhibits.

7. Kingori Jonathan Ndirangu testified as PW 2. He adopted his affidavit sworn on 14/4/2016. He stated that he was the Kiambu District Land Registrar from 2005 to 2013. He adopted his affidavit sworn on 14/4/2016 as part of his sworn evidence in chief. He testified that he was summoned by the plaintiffs' advocate and shown some documents which included: (i) copy of lease dated 7/1/2010; (ii) transfer of lease dated 7/1/2010 and (iii) certificate of lease dated 7/1/2009 purportedly signed by him in 2010. He denied signing these documents. He stated that in the proprietary section of the title, the registered owner is entered as entry number 1 yet if it was a transfer by a previous proprietor, it should have been entered as entry number 3. He added that the first entry should denote registration of the lessee as proprietor, followed by issuance of certificate of lease as entry number 2 and finally, registration of the transfer to the current proprietor as entry number 3. He stated that a transfer cannot be registered before a lease is registered. He further testified that the purported forwarding letter addressed to him was not done procedurally because the lease document would ordinarily be forwarded from the Commissioner of Lands to the District Land Registrar through the Chief Land Registrar and would be copied to the lessee. The Chief Land Registrar would stamp the forwarding letter, indicate the date, and indicate that it had been forwarded to the District Land Registrar. He produced documents marked as SB3-1 to SB 3-3.

8. During cross examination, he stated that the lease held by the 3rd defendant was a forgery because it was not signed by him. He stated that the consent to transfer dated 2/10/2009 was a forgery because at the time it was purportedly issued, the certificate of lease had already been registered in the 3rd defendant's name. He referred to the parcel register (green card) which was purportedly opened on 7/6/2010, yet there were entries in the register pre-dating the opening date of the said parcel register.

9. Wycliffe Omilo Sanji testified as PW3. He adopted his written statement dated 8/4/2013 as part of his sworn evidence in chief. It stated that he worked for the deceased since 1975. He knew the 3rd defendant because he was a neighbour of the deceased. He added that Jua Kali artisans and the 3rd defendant made a claim against the suit property and the Magistrate Court in Kiambu declared that the deceased together with her co-occupants were the lawful owners of the suit property.

Evidence by the 3rd Defendant

10. The 3rd defendant testified as DW1. He adopted his written statement dated 17/5/2017 as part of his sworn evidence in chief. He stated that he sold to a Mr. Ngugi his plot, Number A (Kikuyu Township/259) in 2002 through a sale agreement and he bought the suit property from the deceased. He added that there was a sale agreement which was drawn by Mustafa (deceased) and signed in the presence of Muigai advocate. He stated that he lost the sale agreement, lease and transfer of lease but he had not reported the loss to the police. He further testified that together with Njuguna Nganga, Rahab Wanjiku and the deceased, they occupied the plot out of which the suit property was planned. He confirmed that the deceased was allocated Plot Number C (the suit property).

11. James Ngugi Kinuthia testified as DW2. He adopted his written statement dated 21/5/2018 as part of his sworn evidence in chief. He stated that he entered into a sale agreement with Mr. Ngosia for purchase of Parcel Number 259 which neighbours the suit property. The said parcel did not have a title. He made efforts to process title and he obtained the title. He further testified that he was involved in the purchase of the suit property from the deceased by the 3rd defendant although he did not witness the signing of any agreement. He further stated that he witnessed payment of purchase price by the 3rd defendant to the deceased.

Submissions

12. The plaintiffs filed their written submissions on 25/2/2019. They submitted that the deceased did not sell the suit property to the 3rd defendant. They added that the purported title held by the 3rd defendant was a forgery procured fraudulently. It was further submitted that the 3rd defendant did not have any valid interest in the suit property. Counsel for the plaintiffs added that PW2 who was the Kiambu Land Registrar confirmed that the title documents held by the 3rd defendant were forgeries which did not bear the mandatory attestation. It was further submitted that the purported lease, transfer, certificate of lease, parcel register and consent to transfer had glaring anomalies and the glaring anomalies confirmed the forgery and fraud. It was added that there was no transfer of the suit property to the 3rd defendant.

13. The Attorney General filed written submissions on 12/3/2019. He submitted that the purported transfer was a fraud because the deceased died in 2003 whereas the transfer is purported to have been signed in 2007. The Attorney General further submitted that the green card for the purported title held by the 3rd defendant is indicated to have been opened long after the title had been issued, clear evidence that the title is a fraud.

14. The 3rd defendant filed written submissions in 12/3/2019. He submitted that the plaintiffs did not have *locus standi* to institute this suit. He added that PW1 could not explain why the suit property was not included in the deceased will dated 14/5/1982. He further submitted that the letter of allotment which the plaintiffs were relying on was issued after the deceased had died hence they cannot challenge the title he held. He added that as a registered proprietor, his title was indefeasible.

Analysis & Determination

15. I have considered the parties' respective pleadings, evidence and submissions. I have also considered the relevant legal framework and jurisprudence. As noted above, the case of the 3rd defendant as contained in his statement of defence is diametrically different from the evidence which he led. In his defence, he contested the deceased's ownership of the suit property. In the subsequent evidence tendered in court, his position changed and he asserted that the deceased owned and sold to him the suit property. Secondly, in paragraph 1 of his statement of defence, the 3rd defendant admitted the plaintiffs' *locus standi* to bring the suit and never challenged it throughout the trial. He only raised it in submissions. My view is that the 3rd defendant having expressly admitted in paragraph 1 of his defence that the plaintiffs were administrators of the estate of the deceased and never having raised any issue relating to *locus*, he cannot raise the issue at this stage.

16. Five issues fall for determination in this suit. The first issue is whether the deceased, Ramniklal Hansraj Raja, owned the suit property prior to his death. The second issue is whether the deceased sold and transferred the suit property to the 3rd defendant. The third issue is whether the 3rd defendant has a valid or legitimate title to the suit property. The fourth issue is who is the legitimate owner of the suit property. The fifth issue is whether the estate of the late Ramniklal Hansraj Raja is entitled to the prayers sought in the plaint. I will make pronouncements on the five issues sequentially in the order in which they have been framed.

17. The first issue is whether the deceased, Ramniklal Hansraj Raja owned the suit property prior to his death. PW1 testified and produced documents demonstrating that the deceased together with three other persons occupied and developed the suit property on the basis of a temporary occupation licence (TOL). Subsequently, a part-development plan was formulated by the Director of Physical Planning and the parcel of land was planned into 4 portions designated as A, B, C and D. The deceased was allocated Plot Number C (which is the **suit property**) through a letter of allotment dated 27/5/2003. The allotment followed a judgment which had been rendered in Kiambu SPMCC No 1497 of 1993.

18. Similarly, the 3rd defendant testified that the deceased was the lawful allottee of the suit property. The point of divergence between the plaintiffs and the 3rd defendant is that the 3rd defendant contends that the deceased subsequently sold the suit property to him, an allegation which the plaintiffs deny. Whether or not the deceased sold the suit property to the 3rd defendant will be answered in the subsequent paragraph in this judgment. My finding on the first issue therefore is that the deceased, Ramniklal Hansraj Raja, owned the suit property prior to his death.

19. The second issue is whether the deceased sold and transferred the suit property to the 3rd defendant. The 3rd defendant contends that the deceased sold and transferred to him the suit property. No documentary evidence of the alleged sale was produced by him. Secondly, uncontroverted evidence was produced by the plaintiffs showing that the deceased died on 11/5/2003. The purported lease upon which the

purported certificate of lease held by the 3rd defendant was issued indicates that it was signed by the deceased on 7/12/2009 and registered on the same day. That is more than six years after his demise in 2003. The said lease was not certified and therefore does not bear the signature and name of the person certifying it. Factually and legally, the lease could not have been registered without certification. Mr Kingori who was alleged to have registered the purported lease denied registering it and said that the lease was a fraud.

20. Thirdly, the transfer of lease upon which the purported certificate of lease held by the 3rd defendant was allegedly issued indicates that it was signed by the deceased on 7/12/2009, which is more than six years after his demise. Similarly, the said transfer was not certified and could not have been registered without certification. Mr Kingori who was the Land Registrar at Kiambu Lands Registry denied registering the said transfer of lease.

21. Fourthly, the certificate of lease purportedly issued to the 3rd defendant on 7/1/2009 indicates that the parcel register against which it was issued was opened on 7/6/2010, sixteen months after the certificate of lease had been issued. Similarly, the top page shows that it was signed and sealed on 7/1/2009 while the proprietorship section shows that it was issued on 7/1/2010. Further, whereas the 3rd defendant contends that the deceased transferred to him the lease on 7/1/2010, the entry in respect of the said transfer is not reflected because if it were so, entry number 1 would be registration of the deceased as proprietor while entry number 2 would be issuance of certificate of lease to the deceased. The purported subsequent transfer to the 3rd defendant would be entry number 3. In the alleged title held by the 3rd defendant, registration of the 3rd is entry number 2 instead of entry number 3.

22. Fifthly, Mr Kingori who served as Land Registrar at Kiambu denied signing or issuing the said certificate of lease and contended that all the documents held by the 3rd defendant in relation to the suit property were forgeries.

23. The totality of the above evidence is that the documents held by the 3rd defendant are forgeries which were fraudulently procured and inserted into the parcel register for the suit property. It is therefore my finding that the deceased neither sold nor transferred the suit property to the 3rd defendant.

24. The third issue is whether the 3rd defendant has a legitimate title to the suit property. The fourth issue is who is the legitimate owner of the suit property. The two issues are related and I will pronounce my findings on them simultaneously.

25. I have made a finding that the suit property belonged to the deceased prior to his death in 2003. I have also made a finding that the deceased neither sold nor transferred the suit property to the 3rd defendant. Further, I have made a finding that the documents held by the 3rd defendant purporting to be title documents relating to the suit properties are forgeries and are not authentic title documents. They were not issued by the Lands Registry at Kiambu. It is therefore my further finding that the 3rd defendant does not have a valid or legitimate title to the suit property, Plot Number C Kikuyu Township now designated as Parcel Number Kikuyu Township/2691. It is my further finding that the estate of the late Ramniklal Hansraj Raja is the lawful owner of the suit property.

26. Having made the above findings, it follows that the estate of the late Ramniklal Hansraj Raja is entitled to the prayers sought in the plaint in this suit.

27. The plaintiffs made a plea for damages. I am satisfied that the 3rd defendant engaged in fraud against the estate of the deceased. Consequently, I condemn the 3rd defendant to pay the estate of the late Ramniklal Hansraj Raja general damages assessed at Kshs 5,000,000. He will bear interest from date of judgment. He will also pay costs of this suit.

28. I have spared the 1st and 2nd defendants for two reasons. Firstly, the office of Commissioner of Lands no longer exists. Secondly, it is clear that the documents which the 3rd defendant is waving are forgeries and were not registered by the Lands Registry. What appears to have happened is that the 3rd defendant in conjunction with unknown persons attempted to create a parcel register and made fraudulent entries therein. The then Land Registrar was categorical that he was not involved in the forgeries.

Disposal Orders

29. Consequently, I make the following disposal orders.

a) A permanent injunction is hereby issued restraining the 3rd defendant whether by himself, his agents, employees, servants and /or otherwise howsoever, from entering, occupying, residing on, remaining on or otherwise claiming title or interest whatsoever in the property known as Kikuyu Township/261 or any part thereof or otherwise interfering with the administration of the Estate of the Ramniklal Hansraj Raja by the plaintiffs or any of them in relation to the property known as Kikuyu Township/261.

b) A permanent injunction is hereby issued restraining the 3rd defendant whether by himself, his agents, employees, servants and /or otherwise howsoever, from selling, disposing off, leasing, charging, pledging, alienating or in any other manner whatsoever dealing with the suit property known as Kikuyu Township/261 or any part thereof.

c) It is hereby declared that the 3rd defendant's purported certificate of lease to the property known as Kiambu/Kikuyu Township/261 is a forgery and the same should be surrendered and cancelled and expunged from the register forthwith.

d) It is hereby declared that the deceased Ramniklal Ransraj Raja is the rightful allottee from the Government of Kenya of the Parcel of land known as Kikuyu Township/261.

e) The 3rd defendant is ordered to pay the estate of the late Ramniklal Ransraj Raja general damages of Kshs 5,000,000.

f) The plaintiffs are awarded costs of this suit together with interest at court rates from the date of this judgment to be paid by the 3rd defendant.

CID Intervention

30. In view of the serious fraud disclosed in this suit, I direct the Registrar of this court to cause certified copies of this Judgment to be served on the Director of Criminal Investigations and the Director of Public Prosecutions to enable them deal with the matter within the legal framework of their respective offices.

DATED, SIGNED AND READ AT NAIROBI ON THIS 30 TH DAY OF JULY 2019.

B M EBOSO

JUDGE

In the presence of:-

Mr Malonza for the plaintiffs

Ms Akoth for Mr Karanja for the 3rd defendant

Court Clerk - June Nafula