

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 80 OF 2018

ERWIN AUGUST STILLHARD.....1ST PLAINTIFF

SUMINDER SONIA STILLHARD – SEHMI.....2ND PLAINTIFF

VERSUS

ZEVERCHAND RAMJI SHAH.....1ST DEFENDANT

WYCLIFF KEN LUGWILI.....2ND DEFENDANT

MOSES NDIRANGU ITUMIA.....3RD DEFENDANT

CHIEF LAND REGISTRAR.....4TH DEFENDANT

JUDGEMENT

1. The Plaintiffs claimed that they purchased the land known as land reference number 3734/541 situated in Lavington, Nairobi (“the Suit Property”) on 20/8/1993 for value at a consideration of Kshs. 3,000,000/= free of any encumbrances or overriding interest. The Plaintiffs enjoyed quiet possession of the Suit Property until 2016 when they lost the original certificate of title and were issued a provisional certificate after they made an application. The provisional certificate of title was registered as I.R No. 1474/20. The Plaintiffs claim that they have been paying rates to the County Government of Nairobi. They learned when they visited the rates department of the Nairobi City County on 21/2/2018 that the rent payment account for their property bore the names of the 2nd and 3rd Defendants. On inquiry at the rates department they learned that the 2nd and 3rd Defendants caused a change of the ownership details of the Suit Property from the Plaintiffs names to their own names on 13/2/2018. They brought this suit. The Defendants did not file defences.

2. The 1st Plaintiff gave evidence and produced a copy of the agreement for sale dated 6/6/1993 confirming their purchase of the Suit Property. He also produced a copy of the gazette notice dated 9/6/2017 on the issue of a provisional certificate to the Plaintiffs together with a copy of the provisional certificate which confirms at entry number 17 that the land was transferred to the Plaintiffs on 20/8/2019. Entry numbers 18 and 19 relate to a caveat under Section 55 of the Registration of Titles Act and its withdrawal. The 1st Plaintiff also produced copies of rates demand notes dated 15/2/2019, 22/2/2018, 24/3/2016, 16/3/2014, 18/2/2013, 17/3/2011 and 17/5/2006 which were issued in the Plaintiffs’ names. The rates demand note demand 21/2/2018 was issued in the names of the 2nd and 3rd Defendants. The Plaintiff also produced a copy of the transfer dated 23/7/2014 showing that the 1st Defendant purchased L.R. No. 3734/541 (original number 3734/5/336) from the 2nd and 3rd Defendants at the sum of Kshs. 18,000,000/=. He also produced copies he retrieved from the rates department of the pin certificates for the 2nd and 3rd Defendants and the copy of the title which reflects the transfer to the 1st Defendant stated to have been registered on 27/5/1998. He also produced a copy of its advocate’s letter addressed to the 4th Defendant urging both the Defendants to investigate the fraudulent transfer of the Plaintiff’s land. The Plaintiffs denied ever transferring the suit land to the 2nd and 3rd Defendants.

3. The court has considered the submissions filed by the Plaintiff that they have never sold or transferred the Suit Property to any person. The court is satisfied that the Plaintiffs have established their claim to the Suit Property and that the 1st and 2nd Defendants did not acquire any rights or interest over the Suit Property that they could legally transfer to the 3rd Defendant. The change of the ratepayers’ details at the rates department of the Nairobi City County from the Plaintiffs to those of the 1st and 2nd Defendants was not proper and ought not to have been done.

4. The court is satisfied that the Plaintiffs have proved their claim on a balance of probabilities and grants prayers (i), (ii), (iii) and (iv) of the plaint. The Plaintiff is awarded the costs of this suit to be borne by the 2nd and 3rd Defendants.

Dated and delivered at Nairobi this 8th day of August 2019

K.BOR

JUDGE

In the presence of: -

Mr. O. Litoro for the Plaintiffs

Mr. V. Owuor- Court Assistant

No appearance for the Defendants