



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 703 OF 2011

TEJPRAKASH SEHMI.....PLAINTIFF

VERSUS

PETROAFRIC COMPANY LIMITED.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

LAND REGISTRAR NAIROBI.....3RD DEFENDANT

JUDGEMENT

1. In the plaint filed in court on 13/12/2011, the Plaintiff challenges the registration of the 1st Defendant as proprietor of land reference number 209/4844/1 measuring 0.599 acres (“the Suit Property”) over which the Plaintiff’s father and his brothers had a leasehold for 50 years from 20/6/1956. The Plaintiff claimed that the leasehold was extended by the 2nd Defendant for a further term of 40 years from 20/6/2006. He claimed that the Suit Property, which is developed with 32 residential units on it, was bequeathed to him and his siblings by their mother Mrs. Joginder Kaur.

2. The Plaintiff averred that he received a notice to vacate the Suit Property from the 1st Defendant’s advocate in November 2011 and that a group of men armed with *pangas*, *rungus* and other crude weapons invaded the Suit Property and commenced demolition on 3/12/2011 while claiming that they were sent by the 1st Defendant. The Plaintiff averred that the allocation of the Suit Property to the 1st Defendant was fraudulent and seeks its revocation and affirmation of the Plaintiff’s extension of the lease.

3. In its defence filed in court 15/8/2014, the 1st Defendant denied the Plaintiff’s claim and averred that the Plaintiff lacked the authority to bring this suit. The 1st Defendant averred that it is the registered lessee of Nairobi/Block 55/78 formerly known as land reference number 209/4844/1 pursuant to a lease dated 21/1/2010, which was registered on 5/2/2010. Further, the 1st Defendant averred that the Plaintiff’s development was illegally on the Suit Property and reserved the right to counterclaim for demolition and eviction. It denied being involved in any illegal acquisition of the Suit Property and maintained that it duly observed all due processes and procedures in acquiring the Suit Property. The 1st Defendant disclosed that the Suit Property was charged to Gulf African Bank Limited to secure a loan of Kshs. 30,000,000/= which was to be used to develop the Suit Property.

4. The Plaintiff’s evidence was taken by the Hon. Mr. Justice Mutungi during the service week on 26/11/2018. The Plaintiff stated that he was a beneficiary of the estate of his late father and mother of Jaswinder Singh Sehmi and Joginder Kaur who were the registered proprietors of the Suit Property situated in Mbotela Estate Nairobi. He stated that the property was bequeathed to him and his siblings by their mother following their father’s demise. His father and Kartar Singh, Gurbachan Singh and Chatter Singh were all registered as the owners of the Suit Property. He produced copies of the title over the Suit Property, special power of attorney and the grant of probate. He also produced a copy of the will which mentioned the Suit Property as being bequeathed to the Plaintiff with Jasdeep Singh Sehmi and Tejinder Kaur Sehmi in equal shares.

5. He stated that prior to the expiry of the lease, his family applied to the City Council of Nairobi for extension of the lease. He produced a copy of the letter dated 30/1/2006 from the Commissioner of Lands to the Director of Surveys, Director of City Planning and Director of Physical Planning which confirmed receipt of an application for extension of lease and sought the comments of these offices. The Director of Physical Planning responded to that letter on 23/2/2006 indicating that his office had no planning objection to the extension of lease.

6. The City Council of Nairobi wrote to Kartar Singh and another on 4/9/2007 informing them that their application for extension for the sublease had been approved by the Council in its General Purposes Committee Meeting held on 21/11/2006. The letter stated that a further term of 40 years with effect from the expiry of the lease had been granted subject to the conditions set out in the letter which included revision of the ground rent and the sub lessee meeting the costs of the transaction. He produced a copy of the minutes showing this. He also annexed an extension of lease which was executed on the part of the City Council of Nairobi and Kartar Singh and Jarswinder Singh. He annexed a copy of the letter dated 25/8/211 from the City Council of Nairobi to the Chief Land Registrar forwarding the lease to be

registered in the name of Kartar Singh.

7. Mr. Sehmi stated that he received the notice on 1/11/2011 from Abdulrahman and Company Advocates addressed to the occupants of the Suit Property demanding that they vacate the premises. He also produced a copy of the response his advocates wrote on 6/12/2011 to this law firm and photographs showing the demolition of the structures on the Suit Property.

8. The Plaintiff produced its advocate's letter addressed to the National Land Commission (NLC) together with the letter from Nairobi City County dated 23/3//2015 which stated that the Suit Property belonged to Kartan Singh and another following the extension of the lease. He produced the representation made by the NLC on 17/11/2015 on the disputed property which confirmed that the lease over the Suit Property have been extended in favour of Kartar Singh and Jaswinder Singh.

9. The letter from the Nairobi City County dated 23/3/2017 addressed to the Chief Land Registrar also confirmed that the Suit Property was leased to Kartar Singh and Jaswinder Singh by the former Council. The letter stated that the lease registered as Block 55/78 in favour of the 1st Defendant was contested and was not sanctioned by the City Council of Nairobi. Another letter dated 26/5/2017 addressed to the Plaintiff from Nairobi City County confirmed this position. The Plaintiff produced the rates demand note dated 21/2/2008 addressed to Kartar Singh and others and evidence of the payment made on 26/2/2008. He also produced other rates demand notes dated 5/1/2009, 19/1/2010, 5/12/2011 all of which were addressed to Kartar Singh and others.

10. During cross-examination the Plaintiff confirmed that the Suit Property was not in his name. He had not produced evidence to show how the property moved from Kartar Singh to himself. He stated that his grandfather developed the property and that by 2007 Kartar Singh and Jarswinder Singh were both dead. The witness agreed that he had not exhibited records to show how the Suit Property moved from his father to his mother. He maintained that the Suit Premises were in a habitable state in 2006 when they applied for the extension of the lease. He stated that the 1st Defendant was invited to attend the review meeting by NLC but did not attend. He confirmed that the 1st Defendant had not put up any buildings on the Suit Property and that the tenants who were in occupation of the Suit Property had been their tenants for many years.

11. Mr. Ahmed Abudulahi Ali, a director of the 1st Defendant gave evidence. He stated that the 1st Defendant was the registered lessee of Nairobi/Block 55/78 formerly known as L.R. No. 209/4844/1 pursuant to a lease dated 21/1/2010 which was registered on 5/2/2010. He stated that the Plaintiff had no recognisable right over the Suit Property and that the 1st Defendant was entitled to peaceful possession of the Suit Property having acquired it without notice of any other rival interest. The 1st Defendant faulted the Plaintiff for leaving out Gulf African Bank Limited whom the Suit Property is charged to from the proceedings.

12. The 1st Defendant produced the letter dated 2/7/2009 written by Wetangula, Adan, Makokha and Company Advocates to the Chief Valuer of Nairobi City Council, in reference to the lease of L.R. No. 209/4844/1 Nairobi. The letter stated that the advocates had been instructed by Petroafric Company Limited to request a lease over this property. The letter stated that the lease held by previous tenants, Kartar Singh, Gurbachan Singh, Jaswinder Singh and Chatter Singh had expired in 2006 and they had not shown any interest in the property thereafter. The letter stated that Petroafric Company Limited intended to put up a modern petrol station on the property and was ready to abide by the conditions imposed by the Council. The letter was received at the Nairobi City Council on the same day at 3.23 p.m. The City Council of Nairobi responded on 7/7/2009 stating that the request was receiving attention and the Council would revert.

13. The 1st Defendant annexed a demand note dated 9/7/2009 addressed to the 1st Defendant for Kshs. 15,000/= for the beacon certificate showing the Suit Property. On 10/7/2009 the City Council of Nairobi issued a receipt to the 1st Defendant on account of beacon certificate, survey fee and application fee all totaling to Kshs. 25,300/=. The 1st Defendant also produced a copy of the cheque dated 21/7/2009 for the sum of Kshs. 82,800/= issued to the City Council of Nairobi. It is not clear what this payment was for.

14. The 1st Defendant also produced a lease in respect of Nairobi/Block 55/78, formerly known as plot number L.R. No. 209/4844/1 dated 21/1/2010. The lease which was drawn by Wetangula, Adan, Makokha and Company Advocates, gave the consideration of Kshs 138,000/= as stand premium and the annual rent as Kshs. 36,000/=. The 1st Defendant also produced a certificate of lease issued on 5/2/2010. It is endorsed inside the certificate that the lessee was Patroafric Company Limited. The search produced by the 1st Defendant shows that the land is charged to Gulf African Bank on 27/7/2010 to secure payment of Kshs. 30,000,000/=.

15. Parties filed submissions which the court has considered. The court notes that Gulf African Bank Limited appointed advocates who filed a notice to represent it as an interested party in this suit. The notice was filed on 2/7/2019 after the hearing of the suit had been concluded. No application was made for Gulf African Bank Limited to participate in the proceedings.

16. The issue for determination is whether the Plaintiff has a superior claim to that of the 1st Defendant to the Suit Property. The Plaintiff led evidence to show his claim to the suit land even though he could not explain how the lease was transferred to his mother who then bequeathed it to the Plaintiff and his siblings in her last Will and testament. The Plaintiff produced photographs taken of the demolished buildings on the suit land and testified that there were housing units on the Suit Property from which they collected rent. The Plaintiff produced correspondence which confirms the fact that the Plaintiff did apply for extension of the lease over the Suit Property. He also adduced evidence to show that the City Council of Nairobi approved the extension of the lease over the Suit Property in favour of Kartan Singh and others at the Council's General Purposes Committee Meeting held on 21/11/2006.

17. The 1st Defendant was well aware that the Suit Property was leased to Kartar Singh, Gurbacharan Singh, Jaswinder Singh and Chatter Singh, which is why the 1st Defendant's advocates M/s Wetangula, Adan, Makokha and Company Advocates wrote to the City Council of Nairobi on 2/7/2009 applying for allocation of the Suit Property to the 1st Defendant. The same advocates drew the lease dated 21/1/2010 in favour of the 1st Defendant over Nairobi/ Block 55/78. The 1st Defendant did not lead evidence to show how the Suit Property converted from L.R. No. 209/4844/1 to Nairobi/ Block 55/78. The size of the land also changed from the 0.59 acre indicated in the lease to Kartar Singh, Gurbacharan Singh, Jaswinder Singh and Chatter Singh dated 24/9/1963 to 0.2424 hectares stated in the lease for Nairobi/Block

55/78. There is no evidence that a survey was done by the City Council of Nairobi on the suit land to create the new parcel of land known as Nairobi/Block 55/78. The 1st Defendant did not call a witness from the City Council of Nairobi to give evidence that the Suit Property was lawfully leased to it by City Council of Nairobi.

18. The court finds that the Plaintiff has proved on a balance of probabilities that he has a superior claim to that of the 1st Defendant to the Suit Property. The grants prayers 1 to 8 of the plaint dated 9/11/2011. The Plaintiff is awarded the costs of the suit to be borne by the 1st Defendant. The 1st Defendant is directed to arrange to furnish alternative security to Gulf African Bank Limited within 90 days of the date of this judgement.

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

K.BOR

JUDGE

In the presence of:-

Ms. T. Marienga for the Plaintiff

Mr. I. Wanjohi for the 1st Defendant

Mr. Waigwa holding brief for Mr. Gichuhi for the Interested Party

Mr. V. Owuor- Court Assistant