



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS
ELC SUIT NO 289 OF 2009

HOLY ARCHBISHOPRIC OF IRINOUPOLIS.....PLAINTIFF

VERSUS

THE BOARD OF GOVERNORS,

PARAMOUNT CHIEF KINYANJUI

TECHNICAL TRAINING INSTITUTE.....DEFENDANT

JUDGEMENT

Introduction

1. By an amended Plaint dated 27th January 2011, the Plaintiff sought the following orders:-

- a) *A declaration that LR No Dagoretti/Riruta/844 is the rightful and registered property of the Plaintiff herein.*
- b) *General and aggravated damages for trespass*
- c) *Costs*
- d) *Any other order that this Honourable court may deem fit to grant.*

2. The Defendant filed a defence to the Plaintiff's claim and raised a counter-claim in which it seeks the following reliefs:-

- a) *A declaration that the Plaintiff has breached the conditions of the 1972 lease agreement in respect of the suit parcel and the lease can be set aside.*
- b) *An order that the Plaintiff do surrender to the Land Registrar the certificate of lease held by it purporting to be in respect of the suit property for immediate cancellation.*
- c) *In the alternative to (a) and (b) an order for sub-division of LR No Dagoretti/Riruta/844 for the Defendant to retain approximately 5.719 hectares.*
- d) *General damages*
- e) *Costs*
- f) *Any other relief the court deems fit to grant.*

Plaintiff's case

3. The Plaintiff was granted a lease over the suit property by the government of Kenya on 26th June 1972. The Plaintiff's name was entered in the register on 30th October 1993 and a certificate of lease issued on 24th December 2008. The late president of Cyprus Archbishop

Makarious through the Orthodox Church decided to construct an Orthodox Seminary and a Technical School in order to assist the people of Kenya. It is during the 70's that Paramount Chief Kinyanjui Technical Training Institute (P.C Kinyanjui T.T.I) was constructed. P.C Kinyanjui T.T.I was then handed over to the government for management purposes.

4. The Government employs teachers through the Teachers Service Commission and has put in place a Board of Management to manage the school. The Plaintiff is the one of the members of the board through its representatives. In the year 2008, the Plaintiff learnt of a scheme which had been hatched by the Board of Management to have the Plaintiff's property sub-divided so that the Plaintiff and PC Kinyanjui T.T.I could have separate titles. Surveyors moved into the Plaintiffs land and had it surveyed and beacons were put in place. It is after this that the Plaintiff's officials complained about the illegal activity that the plans for subdivision were shelved. The intended action is what prompted the Plaintiff to file this suit.

5. The Plaintiff contends that P.C Kinyanjui T.T.I is being sponsored by it through donor funding and that it is only the management which was handed over to the government but that the land remained the property of the plaintiff and cannot be sub-divided as intended by the Defendant.

Defendant's case

6. The Defendant through the Principal and Secretary of the Board of management of P.C Kinyanjui T.T.I testified that the property in issue had been set aside for Kinyanjui Memorial High School in 1958. The late President Mzee Jomo Kenyatta granted lease to the Plaintiff in 1972. The understanding of the government was that the Plaintiff was to construct a technical school in part of the property. The government of Cyprus constructed the ground floor of the administration cum tuition block after which the school was handed over to the government in 1974.

7. The current dispute started in 2005 due to the activities of the Plaintiff which included closure of the way leading to the college, construction on the playground of the institute which led to students rioting. The Defendant's board then decided that the best way out of the dispute was to have separate titles for the Plaintiff and the Defendant. Steps were taken to actualize the plans but the plans were not successful because of non-co-operation of the Plaintiff. The Defendant now contends that it is necessary to have the property sub divided to that the school can have its own title as per the government's policy that all schools have their own title.

Analysis of evidence and issues for determination

I have carefully considered the evidence adduced by the Plaintiff and that of the Defendant. I have also considered the submissions by the Plaintiff. The Defendant was given 14 days within which to file submissions with effect from 25th September 2019 but as at the time of writing this judgement, the Defendant had not filed any submissions and if any were filed, they are not in the file. There is no contention that the title to the property in issue is in the name of the Plaintiff. The issues which call for determination are, *firstly whether the Plaintiff's surrender of P C Kinyanjui TTI meant that the land was as well surrendered. Secondly, is it legal to have the Plaintiff's property subdivided so as to give title to the Defendant? Thirdly, was the Defendant's title illegally obtained? Fourthly, did the Plaintiff breach any of the conditions in the 1972 lease? Fifthly are the Plaintiff and the Defendant entitled to their respective prayers? Lastly which order should be made on costs.*

Whether the Plaintiff's surrender of P C Kinyanjui TTI meant that the land was as well surrendered..

8. When the Plaintiff was granted a lease, the lease was given on condition that the Plaintiff put up a technical institute which was to benefit students. The Plaintiff went ahead to construct P.C Kinyanjui TTI which was officially handed over to the government in a ceremony held on 12th October 1978. The institute was not handed over to the government in 1974 as claimed by the Defendant's witness. There was no agreement that the land on which the institute was constructed on was to have its own title or that the land was to be surrendered.

Is it legal to have the Plaintiff's property subdivided so as to give title to the Defendant?

9. The Plaintiff's land cannot be subdivided as to create a separate title for the institute. As late as 6th June 2018, the Principal Secretary of the Ministry of Lands and Physical Planning wrote to the Plaintiff's representatives and assured them that no approval for subdivision will be given. It is therefore ironical for the Defendant to insist that the land has to be subdivided to create a separate title for the institute. It will be illegal to insist on subdividing private property. Special condition No.7 of the lease is clear that the land was not to be subdivided.

Was the Defendant's title illegally obtained?

10. The Defendant in its counter-claim stated that the Plaintiff obtained its title fraudulently. There was no evidence of any fraud adduced. The Plaintiff was granted lease over the property in 1972. The Plaintiff's name was put in the register on 30th October 1973. A certificate of lease was issued on 24th December 2008. At all these stages, the Plaintiff was not involved in any fraud. I therefore find that the Plaintiff's title was lawfully obtained and that there was no fraud involved in its acquisition.

Did the Plaintiff breach any of the conditions in the 1972 lease?

11. There was no evidence of breach of any of the special conditions in the 1972 lease. The Plaintiff has complied with Condition No.5 which required it to put up a seminary , hostel, church ,Bishop's residence and technical school. There has been no notice given pursuant to Condition No.13 requiring the Plaintiff to surrender any portion of its land. It is therefore clear that the Plaintiff has not breached any conditions attached to the 1972 lease.

Conclusion

12. From the analysis hereinabove it is clear that none the prayers in the counter-claim can be granted. The Upshot of this is that the Defendant has failed in its counter claim which is hereby dismissed with costs to the Plaintiff. On the other hand save for a claim for general and aggravated damages which has no basis, I find that the Plaintiff has proved its case. It is the Plaintiff which handed over the institute to the government. The government is therefore lawfully on the portion occupied by the institute. The Defendant cannot therefore be called a trespasser as to call for damages. I therefore enter judgement for the Plaintiff against the Defendant in terms of prayers (a) and (c) of the amended Plaint dated 27th January 2011.

Dated, Signed and delivered at Nairobi on this 5th day of **December 2019**.

E.O.OBAGA

JUDGE

In the presence of:

M/s Wambui Kyama for Mr Chengo for Plaintiff and

M/s Ndundu for Defendant

Court Assistant: Hilda

E.O. OBAGA

JUDGE