



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CIVIL CASE NO. 1319 OF 2016

BAPA INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

NAIROBI CRANKSHAFT CENTRE LIMITED.....DEFENDANT

JUDGEMENT

1. By a lease entered into between Asante Motors Limited and Benzene Holdings Limited dated 23/11/1999, Asante Motors Limited demised to Benzene Holdings Limited Shop number 2 erected on L.R. No. 209/1355/1 for a term of 93 years from 1/9/1959 less the last 7 days, in consideration of the lease premium of Kshs. 1.5 million and on the terms and conditions set out in the lease.
2. By an assignment dated 22/4/2002 Benzene Holdings Limited transferred or assigned to the Plaintiff its rights, title and interest in the lease of Shop number 2 at a consideration of Kshs. 1.5 million paid by the Plaintiff. The Plaintiff avers that the lease conferred proprietary rights over the shop to Benzene Holdings Limited and that the assignment transferred the same proprietary rights over the shop to the Plaintiff.
3. By a transfer registered in the lands office on 31/12/2003, Asante Motors Limited transferred its rights and interests over L.R. No. 209/1355/1 to the Defendant subject to the terms and conditions of the lease. The Plaintiff avers that the transfer to the Defendant was also subject to the lease of Shop number 2 held by the Plaintiff.
4. The Plaintiff claims that it was a term of the lease that it would be entitled to peaceably hold and enjoy the Shop no. 2 during the term of the lease without any interruption from the lessor or any person claiming under it. The Plaintiff claims that the Defendant has been interfering with its peaceful and quiet enjoyment of the shop by insisting that the Plaintiff is a commercial tenant and should therefore pay monthly rent to the Defendant, contrary to the provisions of the lease and the assignment.
5. Further, the Plaintiff claims that the Defendant has severally frustrated the its attempts to meet its obligation under the lease by paying 15.625% of the amount payable as rates to Nairobi City County and its share of the rent payable to the Commissioner of Lands annually. The Defendant returned the payments made by the Plaintiff on account of rates and rent on two occasions.
6. The Plaintiff filed this suit seeking a permanent injunction to restrain the Defendant or its agent from interfering with its right, title and interest over the suit property demised as shop number 2 situated on L.R. No. 209/1355/1. The Plaintiff seeks a declaration that it is the legal owner of shop number 2 erected on L.R. No. 209/1355/1 for a term of 93 years from 1/9/1959 less the last 7 days subject to the terms and conditions of the lease. It also seeks the costs of this suit.
7. The Defendant denied the Plaintiff's claim in its defence filed in court on 26/5/2017. It admitted that Asante Motors Limited entered into a lease with Benzene Holdings Limited dated 23/11/1999 in relation to shop number 2. However, it denied that any proprietary rights were conferred on Benzene Holdings Limited by Asante Motors Limited in the lease dated 23/11/1999. It denied that the Plaintiff had any legal rights over the Suit Property.
8. The Directors of both the Plaintiff and the Defendant gave evidence. Indravadan Patel, the Plaintiff's director, produced a copy of the lease through which Asante motors Limited leased shop number 2 situated on L.R. No. 209/1355/1 to Benzene Holdings Limited. He also produced a copy of the assignment dated 22/4/2002 vide which Benzene Holdings Limited transferred its interest over shop number 2 to the Plaintiff. The assignment was executed by the directors of Asante Motors Limited besides the execution by Benzene Holdings Limited and the Plaintiff. The director produced a copy of the receipt issued by the Department of Lands on 29/4/2002 on account of payment of stamp duty of Kshs. 60,015/= in respect to the assignment for L.R. No. 209/1355/1. He also produced a copy of the certificate of title issued to Asante Motors Limited and the Defendant on 22/1/1999 which shows that L.R. No. 209/13551/1 was transferred to Asante Motors Limited on 19/3/1999.
9. Entry number 3 on the copy of the title indicates a lease to Benzene Holdings Limited of all that shop number 2 on the plan registered in Vol OT folio 869/1710 and the shop marked number 2 for 93 years from 1/9/1959 less the last 7 days at the annual rent of peppercorn if demanded vide I.R. 82464. This entry was registered on 15/12/1999. Entry number 4 was a transfer to the Defendant for Kshs. 1.5 million

subject to entry number 3 above. It was registered on 31/12/2003.

10. The Plaintiff also relied on a letter from Asante Motors Limited addressed for the Plaintiff and Benzene Holdings Limited pointing out that they had to share the land rent and site value tax for the plot at 15.625%. The handwritten letter sought payment of 18,522 as rates and land rent payment to cover the period from 2002 to 2003.

11. Gurjit Singh Nadhra gave evidence for the defence. He confirmed that the suit land was transferred to the Defendant. Unknown to the Defendant, Benzene Holdings Limited had assigned the Suit Property to the Plaintiff. He conceded that at the time the Defendant bought the premises, the title indicated that shop number 2 had indeed been leased to Benzene Holdings Limited but there was no indication of any further registration or assignment.

12. The Defendant sued the Plaintiff in E.L.C. Case No. 622 of 2009 which was dismissed by the court for non attendance. He urged that the Plaintiff has continued to enjoy and utilise the Suit Property without paying rent to the Defendant or paying rates and ground rent due from the demised premises. He faulted the process through which the assignment of the Suit Property was transferred to the Plaintiff. He relied on the fact that Benzene Holdings Limited was dissolved on 27/8/2004 and the clause in the lease between Asante Motors Limited and Benzene Holdings Limited which indicated that Benzene Holdings Limited was not permitted to assign or sublet any part of the shop without the lessor's consent.

13. Only the Plaintiff filed written submissions. The issue for determination is whether the court should grant the orders sought by the Plaintiff. The Defendant admitted that Asante Motors Limited leased shop number 2 to Benzene Holdings Limited. Asante Motors Limited executed the assignment or transfer of shop number 2 from Benzene Holdings Limited to the Plaintiff. This amounts to consent on the part of Asante Holdings Limited to the transfer of the rights and interests over shop number 2 held by Benzene Holdings Limited to the Plaintiff for the remaining term of the lease between Benzene Holdings Limited and Asante Motors Limited.

14. The lease transferred to the Defendant by Asante Motors Limited was subject to the lease of shop number 2 to Benzene Holdings Limited registered against the title of Asante Motors Limited as entry number 3. This is the interest that the Defendant acquired. The Defendant holds the lease over L.R. No. 209/13551/1 subject to the rights of the Plaintiff over shop no. 2 which were transferred by Benzene Holdings Limited.

15. The court grants prayers (i), (ii) and (iii) of the plaint filed in court on 26/10/2016. The Plaintiff is directed to pay its share of all the outstanding rates and other outgoings charged on the suit land within 30 days of this judgement.

Dated and delivered at Nairobi this 11th day of October 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Atika holding brief for Mr. Ogolla for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant