



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 322 OF 2012**

**MISTRY INVESTMENT LIMITED.....1<sup>ST</sup> PLAINTIFF**

**MISTRY INVESTMENT LIMITED( C.NO.16320).....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**GOVINDA BHUSAL CHETTRI.....DEFENDANT**

**JUDGEMENT**

**BACKGROUND.**

1. This suit was filed on 6<sup>th</sup> June 2012 by Mistry Investments Limited. The person behind the filing of this suit is one Porus Phiroze Mistry who purported to be a director of the plaintiff company. The suit was filed against the defendant who had invaded LR No.209/404/3(suit property) purporting to be the owner of the suit property. The defendant had gone ahead to advertise the suit property for sale in the standard newspapers.

2. When the real directors of Mistry Investments Limited learnt of the advertisement of the suit property, they made inquiries with Kenya Commercial Bank Limited who were in possession of the original title to the suit property which is registered in the name of Mistry Investments Limited. The bank informed the directors of Mistry Investments Limited that it had misplaced the original title deed and that the bank was in the process of assisting Porus Phiroze Mistry who had presented himself to the bank as a director to get replacement of the misplaced title.

3. The directors of Mistry Investments Limited then learnt that Porus Phiroze Mistry had filed this suit against the defendant purporting to be a director of Mistry Investments Limited. The directors of Mistry Investments limited then filed an application before the court seeking to be enjoined as the second plaintiff. This application was allowed on 6<sup>th</sup> March 2014. Because there were now two companies with the same name, the court directed that for good order the second plaintiff company be called Mistry Investments Limited C No.16320. This company which was allowed into the suit as a second plaintiff was directed to file its suit and serve it upon those already in the suit. The second plaintiff filed its suit on 20<sup>th</sup> March 2014. The plaint was duly served upon the first plaintiff and the defendant's advocates but there was no appearance from either the first plaintiff or the defendant. The second plaintiff proceeded to request for Judgement and the matter was set for formal proof.

**Second Plaintiff's Case.**

4. The Second plaintiff appeared during the hearing through one of its directors Mr Mudhusudan Gulabhai Desai who testified that the second plaintiff is the registered owner of the suit property. The second plaintiff became the registered owner of the suit property through a conveyance dated 20<sup>th</sup> March 1978. In 2003, Porus Phiroze Mistry filed a suit against Mistry Investments Limited and its directors. The case was HCCC No.416 of 2003. The plaintiff in this suit Porus Phiroze wanted the company to be compelled to hold a meeting of its shareholders to appoint new directors. This suit was dismissed for want of prosecution on 26<sup>th</sup> January 2012.

5. The second plaintiff's directors proceeded to the suit property and found that the defendant had taken possession of the same and had destroyed part of it. They reported the invasion to the police. On 20<sup>th</sup> December 2012, they managed to remove the defendant from the suit property after it became apparent that the defendant was laying claim to the suit property based on a fraudulent transfer. when the defendant learnt that the first plaintiff was not a director of Mistry Investments limited and that Porns Phiroze Mistry was not its director, the defendant made an application to court seeking to strike out the first plaintiff's suit so that he could go ahead to dispose of the suit property. This is what prompted the second plaintiff to file this suit where it is seeking the prayers in the Plaintiff.

**Analysis of evidence and Issues for determination**

6. The second plaintiff listed three issues for determination. The first is whether the second plaintiff is the owner of the suit property. The second is whether the defendant is a trespasser to the suit property. The third is whether the second plaintiff is entitled to the reliefs it is seeking.

7. The second plaintiff was incorporated on 10<sup>th</sup> September 1977. The second plaintiff became registered as owner of the suit property through a conveyance dated 20<sup>th</sup> March 1978 which was registered on the same date. The first plaintiff which filed this suit purporting that the suit property belongs to it is a company which was fraudulently incorporated. The person purporting to be a director of the first plaintiff is Porus Phiroze Mistry. This is the person who filed Nairobi HCCC No.416 of 2003. One of his prayers in that suit was that Mistry Investments Limited be compelled to convene a meeting where new directors were to be appointed. He was never a director and had never been a director. This suit which he had filed was dismissed for want of prosecution on 26<sup>th</sup> January 2012. Almost five months after the dismissal of the suit he had filed, he moved to court and filed the present suit in which he purported to be a director of Mistry Investments Limited.

8. On 4<sup>th</sup> October 2012 the Registrar of Companies wrote to the Land Fraud Investigation Unit giving details of the directorship of Mistry Investments Limited. In this letter, the Registrar of companies concluded that the CR 12 dated 7<sup>th</sup> February 2011 which showed that Porus Phiroze Mistry and Anyesha Porus Mistry as directors of Mistry Investments Limited was not genuine. The Registrar of Companies indicated that the genuine directorship of the company was as per the CR 12 dated 20<sup>th</sup> June 2011. The information contained in the letter of 4<sup>th</sup> October 2012 was brought to the attention of Kenya Commercial Bank Limited's lawyers who wrote a letter dated 9<sup>th</sup> October 2012 indicating that they had advised the bank to stop pursuing a replacement certificate in favour of Mistry Investments Limited led by Porus Phiroze Mistry who had misrepresented himself to the bank as a director of Mistry investments Limited. It is therefore clear that the suit property belongs to the second plaintiff.

9. On the second issue as to whether the defendant is a trespasser on the suit property. I have no doubt that he is a trespasser. The second plaintiff never sold the suit property or transferred it to any person. When the defendant was sued by the first plaintiff, he never filed a defence. He instead moved and filed an application seeking to strike out the suit by the first plaintiff. He did not file a defence to the second plaintiff's suit. In the absence of any document to show the basis of his claim to the suit property, I find that he is a trespasser who wanted to sell the suit property in which he has no interest.

#### **Conclusion.**

10. The second plaintiff's evidence was not controverted. The second plaintiff produced documents which show that it is the registered owner of the suit property. I find that the second plaintiff has proved its case on a balance of probabilities. I allow the same in terms of prayers (a) to (g) of the Plaint dated 20<sup>th</sup> March 2014.

**Dated, signed and delivered at Nairobi on this 11<sup>th</sup> day of October 2018.**

**E.OBAGA**

**JUDGE**

In the presence of :

M/s Ngira for Mr Osundwa for defendant

Hilda : Court Assistant

**E.OBAGA**

**JUDGE**