



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 817 OF 2014

HAMIDA ALI.....PLAINTIFF

VERSUS

PATRICK KIGONDU.....1ST DEFENDANT

LIVINGSTONE OOKO.....2ND DEFENDANT

JOHN KYALO.....3RD DEFENDANT

STEPHEN MBITHI.....4TH DEFENDANT

PETER KARANI.....5TH DEFENDANT

BENARD MWANGI.....6TH DEFENDANT

CHARLES WAWERU.....7TH DEFENDANT

NAIROBI CITY COUNTY.....8TH DEFENDANT

JUDGEMENT

1. The Plaintiff, who is the registered lessee from the City Council of Nairobi of L.R. Nos. 209/4401/408 and 409 claims that the 1st to 7th Defendants entered into her aforesaid property and continue to live in the suit premises without her consent, which amounts to trespass. She claims that she has been deprived of the use and enjoyment of her property and has suffered loss and damage. She seeks an order of eviction, damages for trespass and costs of this suit against these Defendants.

2. The 1st to 6th Defendants filed defences denying the Plaintiffs claim. They averred that to the best of their knowledge, the suit properties are owned by the City Council of Nairobi in trust for the residents of Nairobi. They claimed that the City Council of Nairobi leased the suit properties to their family members or relatives at a rent of Kshs. 290/= way back in 1953 and 1960. They contended that if the Plaintiff is indeed registered as the owner of the suit properties, then the lease lapsed for failure to meet the conditions of the grant of the lease requiring the Plaintiff to complete a building approved by the Council within 2 years from the date of the lease; and failure to pay rent, rates, taxes and other dues to the Council. They urged the court to dismiss the suit and order that the Plaintiff is not entitled to ownership, occupation or possession of the suit property as she claims in the plaint.

3. The 7th Defendant filed a Defence and Counterclaim. He adopted the same line of defence as that of the 1st to 6th Defendants. He urged that the suit property was leased to him in 1994 by the City Council at a monthly rent of Kshs. 290/=. The 7th Defendant averred that he entered into a tenancy agreement with the 8th defendant for the premises known as RH1-4 Makadara Housing Estate comprised in L.R. No. 209/4409/408 and 409.

4. He contended that the 8th Defendant represented to the tenants in occupation including the 7th Defendant that if they paid the rates and money due to the 8th Defendant, the 8th Defendant would during the allocation of the suit properties give the tenants the first priority in the allocation of the premises. He averred that the suit property was fraudulently allocated to the Plaintiff.

5. He counterclaimed for a declaration that the lease over the suit property in favour of the Plaintiff is void and that the Commissioner of Lands ought to revoke the registration of the Plaintiff as lessee and restore the suit property to the 8th Defendant. He also sought an order that the 8th Defendant should allocate the premises he occupies to him together with damages for fraudulent misrepresentation and deceit.

6. The Plaintiff and the 7th Defendant gave evidence. The Plaintiff produced the copy of the lease registered in her favour. The lease states that L. R. No. 209/4401/408 and 409 were leased to the Plaintiff for the residue of the term of 99 years from 1st November 1953 at the annual rent of a peppercorn. The Plaintiff also produced copies of the demand letters sent to the 1st to 7th Defendants.

7. The 1st to 7th Defendants produced copies of the rent cards issued to them by the City Council of Nairobi and stated that they stopped paying rent almost 20 years ago. The 7th Defendant testified that the City Council stopped them from paying rent even though they believed that the land belonged to the City Council. He stated that the Council took a loan which he termed as the timber loan. It was his evidence that the tenants paid off the timber loan against the expectation that the houses would be transferred to them by the Council. He did not produce any evidence to prove this or to confirm that the tenants were to be given the first priority to acquire the houses on the suit property by the 8th Defendant. He conceded that even though the tenants reside in the houses, the houses were not allocated to them.

8. Parties filed submissions. The Defendants challenged the process through which the Plaintiff acquired the Suit Property urging that no authority by the relevant Minister permitting disposal of the suit property was adduced by the Plaintiff. Further, that no minutes or resolution taken by the Council to dispose of the suit land were produced by the Plaintiff. He also contended that the Plaintiff had not shown evidence of payment of rates and rent to the County Government nor had she showed any plans or drawings of the development she proposed to put up on the suit premises to satisfy the conditions set out in the lease. The 1st to 7th Defendants relied on the terms of the lease in urging this point. The 1st to 7th Defendants maintained that they are not trespassers and that their stay in the suit premises is lawful.

9. Section 24 of the Land Registration Act provides that the registration of a person as the proprietor of a lease vests in that person the leasehold interest described in the lease together with all the rights and privileges. The Plaintiff has a registered lease over the Suit Property.

10. The 1st to 7th Defendants have not demonstrated that they are lawfully on the suit premises. The 7th Defendant who testified and who filed a counterclaim confirmed that he last paid rent to the 8th Defendant more than 20 years ago. This contradicts the assertion of the 1st to 7th Defendants that they are the 8th Defendant's tenants.

11. The 8th Defendant denied that the Plaintiff owes it rates or any other outgoings as claimed by the 1st to 7th Defendants. Failure by the Plaintiff to pay rates to the 8th Defendant would not entitle the 1st to 7th Defendants to continue occupying the suit premises. It may not have been possible for the Plaintiff to develop the suit land while the 1st to 7th Defendants occupied the suit premises.

12. The court finds that the Plaintiff has proved her case and grants an order of eviction against the 1st to 8th Defendants. The 7th Defendant's counterclaim is dismissed. The Plaintiff is awarded the costs of both the suit and the counterclaim to be borne by the 1st to 7th Defendants.

Dated and delivered at Nairobi this 9th day of October 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Mwesigwa holding brief for Mr. Maina for the Plaintiff

Mr. Oduk for the 1st to 7th Defendants

Mr. Ogari holding brief for Ms. Omesa for the 8th Defendant

Mr. V. Owuor- Court Assistant