



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CIVIL SUIT NO. 306 OF 2008

ZEP-RE (PTA REINSURANCE COMPANY).....PLAINTIFF

VERSUS

TRANSJUBA INTERNATIONAL LIMITED.....1ST DEFENDANT

REGISTRAR OF TITLES.....2ND DEFENDANT

COMMISSIONER OF LANDS.....3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed suit seeking the following reliefs:

- i. A declaration that the 1st Defendant's title and ownership of LR No. 209/12259 I.R No. 67269 is null and void;
- ii. An order directing the Registrar of Titles and Commissioner of Lands to recall and cancel the 1st Defendant's title and rectify its records to show that the Plaintiff is the lawful owner of the suit premises;
- iii. General damages for trespass with interest;
- iv. An injunction restraining the 1st Defendant from interfering with the Plaintiff's use and enjoyment of the Suit Property; and
- v. Costs of the suit.

2. The Plaintiff is a body corporate established by members of COMESA under Article 174 of the treaty and legal notice number 6 of 2004. It changed its name to ZEP-RE (PTA Re-Insurance Company). The Government of Kenya became a member of COMESA on 9th October, 1995. The Plaintiff was allocated L.R No. 209/12259 I.R No. 67269 by the Government of Kenya and a title registered in its name on 25th October, 1995 ("the Suit Property").

3. The 1st Defendant is a limited liability company, while the 2nd and 3rd Defendants are the Registrar of Titles and Commissioner of Lands respectively.

4. On or about 2002 December, 2007 the Plaintiff was informed that the Suit Property was being offered for sale by a Mr. Patrick Nyamweya who had erected a shanty housing a watchman on the Suit Property.

The Plaintiff reported the trespass to its land at the Industrial Area Police Station.

5. The Plaintiff carried out a search which confirmed that the records at the Ministry of Lands had not been altered.

6. The Plaintiff filed an application for injunction to restrain the 1st Defendant from carrying out any construction work or interfering with the title over the Suit Property. The court allowed this application on 30th June, 2010.

7. The Plaintiff vide its application dated 6th October, 2010, brought under order 6 rule 13 (1) (a) (b) (d) of the Civil Procedure Rules seeking to have the 1st Defendant's defence struck out on the grounds that it disclosed no defence, was scandalous, frivolous and vexatious and an abuse of the court process. In his ruling delivered on 3rd February, 2011, Justice Muchelule allowed the application and struck out the 1st Defendant's defence. The court directed the Plaintiff to set the suit down for formal hearing.

8. The suit was heard on 17th May, 2017 when Jerry Sogoli, the Plaintiff's Company Secretary testified on its behalf. He adopted his witness statement as his evidence in the case.

9. Mr. Sogoli testified that the Plaintiff was allocated the Suit Property on 25th October, 1995. When the Plaintiff learnt in 2007 that somebody had encroached on its land and intended to build on it, it reported this to the police and put out a "buyer beware" notice. The Plaintiff then filed this suit primarily to have the 1st Defendants title declared to be null and void. The witness stated that as against the Plaintiff was seeking to have 2nd and 3rd Defendants rectify the records in the event that any of the records had been altered.

10. On cross-examination by the advocate for 2nd and 3rd Defendants, the witness confirmed that the lands records had not been altered and that the Plaintiff was still the owner of the Suit Property. The witness stated that the Plaintiff seeks damages against the 1st Defendant and not the 2nd and 3rd Defendants. The witness produced various documents which included the agreement between the Government of Kenya and ZEP-EP Reinsurance Company, letter of allotment, copies of the grant and deed plan over the Suit Property. The witness also produced a rates demand notice dated 2nd July, 2006 addressed to the Plaintiff together with receipts confirming payment of the rates.

11. The witness also produced an invoice ostensibly issued by Nairobi City Council to the 1st Defendant for the construction site sign board, as well as a copy of a letter of approval dated 8th April, 2008 issued to the 1st Defendant by the City Council of Nairobi for the proposed domestic building, gatehouse, boundary wall and 18 maisonettes. The letter specified what by-laws the approval was subject to. He also produced a copy of the land rate payment slip issued to the 1st Defendant on 27th July, 2007 showing that the 1st Defendant had paid land rent of Kshs. 272,000/= together with a rate demand note dated 8th November, 2007 from the City Council of Nairobi.

12. The witness also produced a copy of the 1st Defendant's title the Plaintiff seeks to have cancelled. It shows that the 1st Defendant was granted L.R No. 209/12259 to hold for 99 years from 1st July, 1998.

13. The Plaintiff's advocate filed written submissions in which he argues that the Plaintiff was granted the Suit Property by the Government of Kenya and that since the records at the land's office still reflects the Plaintiffs as a registered proprietor of the Suit Property then the Suit Property was not available for allocation to the 1st Defendant or any other person. He maintains that the Plaintiff's title has not been challenged as having been obtained illegally or unprocedurally. The Plaintiff's advocate urged the court to grant the orders sought in the plaint.

14. Having considered the pleadings, the evidence produced in court and submissions made by the Plaintiff's counsel the court is satisfied that the Plaintiff has proved its case on a balance of probability

and that it is the registered owner of the Suit Property.

15. Under Section 24 of the Land Registration Act, the registration of a person as a proprietor of a lease vests in that person the leasehold interest described in the lease together with all the rights and privileges subject to all implied or expressed agreement and liabilities of the lease. The rights of a proprietor are not liable to be defeated except as provided in that Act and are held by that proprietor free from all other interests and claims. Once the Plaintiff was registered as proprietor of the Suit Property, it was entitled to enjoy all the rights and privileges under the lease.

16. The court grants the reliefs sought in the plaint except the prayer for general damages for trespass since no evidence was led to prove this. The Plaintiff will have the costs of the suit against the 1st Defendant.

Dated and delivered at Nairobi this 20th day of July 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Ndege for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court Assistant