



Yellow Horse Inns Limited v Mitar Consultants Limited (Environment & Land Case E431 of 2022) [2024] KEELC 1280 (KLR) (29 February 2024) (Judgment)

Neutral citation: [2024] KEELC 1280 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E431 OF 2022
MD MWANGI, J
FEBRUARY 29, 2024**

BETWEEN

YELLOW HORSE INNS LIMITED PLAINTIFF

AND

MITAR CONSULTANTS LIMITED DEFENDANT

JUDGMENT

1. The plaintiff filed this suit against the Defendants via a Complaint dated 22nd December, 2022 seeking for the following orders;
 - a. An order of permanent injunction restraining the Defendants by their directors, agents, servants, employees, officers or any other person, body or authority from offering for sale, selling, charging, leasing or in any way dealing with all that property comprised in LR No.209/11856.
 - b. A declaration that the Plaintiff is the registered owner of the property comprised in L.R No. 209/11856.
 - c. An order directing the Chief Land Registrar, Nairobi to revoke any title or grant, if any, issued to the 1st Defendant over the property comprised in LR No. 209/11856.
 - d. Costs of this suit.
2. The suit as against the 2nd Defendant was withdrawn hence the matter proceeded as against the 1st Defendant only.

Plaintiff's case

3. The plaintiff pleaded that it is the registered owner of all that parcel of land known as L.R NO. 209/11856. It averred that on 20th December, 2022, the Plaintiff's counsel received a Letter dated



20th November, 2022 from the firm of Peter Kibet & Co. Advocates alluding to the discussions held between a Director of the Defendant and representatives of Winners Chapel regarding the sale of the suit property. In the said Letter, the Defendant alleges that it has regularized its ownership of the suit property and duly paid rates to the Nairobi City County Government.

4. The Plaintiff asserts that it retains ownership of suit property to date and has never sold or offered it for sale. It still holds the Original Grant No.57903 and is also the ratable owner of the suit property.
5. The Plaintiff accuses the 1st Defendant of misrepresentation and falsehoods as stated in its Letter dated 24th November, 2022. The particulars being that the Defendant has falsely represented itself to a third party as the legal owner of the suit property and further misrepresenting that the suit property which is owned by the Plaintiff is available for sale and indeed purporting to offer it for sale.
6. The Plaintiff accuses the Defendant of fraud and giving false information to a 3rd party regarding the suit property with the aim of illegally selling the same to the 3rd Party and or defrauding 3rd parties off their money.
7. The Plaintiff asserts that it is the ratable owner of the suit property although there is a dispute on rates pending determination before this court.
8. It is stated that the Defendant's actions caused the Plaintiff to suffer business discredit and instilled panic especially to the tenant currently in occupation of the suit property. The Plaintiff therefore prays for the orders above to protect its proprietary interest in the suit property.
9. Despite being served with summons to enter appearance, the defendant neither entered appearance nor filed a statement of Defence.
10. The case proceeded as an undefended case under the provisions of Order 10 Rule 9 of the Civil Procedure Rules.

Evidence adduced

11. Joseph Gathuku Kamuiru, a director of the Plaintiff, testified as PW1 in support of the Plaintiff's case. He adopted his witness statement dated 22nd December, 2022 as his evidence in-chief. He further produced the documents listed on the Plaintiff's Bundle of documents dated 22nd December, 2022 as Exhibits 'PE 1-6' in the order in which they are listed therein.
12. PW1 stated that he seeks the prayers stated in the Plaint filed herein. He further averred that the Plaintiff filed this suit because the Defendant was trying to steal the suit property by alleging that it had been authorized to sell the property by the Plaintiff which was not true. He stated that the Defendant was not alleging ownership but claiming authority to sell the suit property. He informed that court that there is a church building on the property - Winners Chapel.

Issues for determination

13. With the foregoing outline of the pleadings and the evidence adduced, the sole issue for determination is whether the Plaintiff has proved its case against the Defendant to the required standard.



Analysis and determination

14. Although the suit was undefended, the Plaintiff has a duty to prove its case on a balance of probabilities as is required by law. Section 107 of the [Evidence Act](#) Cap 80 of the laws of Kenya provides that: -

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
15. In the case of Kirugi and Another –vs- Kabiya & 3 others (1987) KLR 347, the Court of Appeal held that:

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
16. Similarly, in the case of Gichinga Kibutha –vs- Caroline Nduku (2018) eKLR, the Court held that:

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
17. PW1 stated that the Plaintiff is the registered owner of the suit land. The title document was adduced as proof of ownership.
18. The law is very clear on the position of a holder of a title in respect to the land. Section 24(a) of the [Land Registration Act](#) provides for the interest conferred by registration. It provides that:

“Subject to this Act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.”
19. Section 26(1) of the [Land Registration Act](#) also provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is the absolute and indefeasible owner”
20. The Plaintiff has proved that it indeed is the registered owner of the suit property. It is therefore entitled to protection of its proprietary rights. The Plaintiff is entitled to all the rights, interest and privileges appurtenant thereto. As such prayers (a) and (b) of the Plaint are therefore merited.
21. Regarding the third prayer directing the Chief Land Registrar, Nairobi to revoke any title or grant, if any, issued to the Defendant over the suit property, PW1 clarified in his testimony that the Defendant was not claiming ownership of the suit property but was claiming authority to sell the suit property. No evidence was provided before the court to demonstrate the existence of any other title other than the one in the name of the Plaintiff. In the circumstances, I find it superfluous to issue an order directing the Registrar to revoke any title or grant, if any, issued to the 1st Defendant over the property comprised in LR No. 209/11856.
22. From the foregoing analysis, the Plaintiff has proved its case on a balance of probabilities and in this regard, this Court makes the following final orders:



- a. An order of permanent injunction be and is hereby issued restraining the Defendant by its directors, agents, servants, employees, officers or any other person, body or authority from offering for sale, selling, charging, leasing or in any way dealing with all that property comprised in L.R No.209/11856.
- b. A declaration be and is hereby made that the Plaintiff is the registered owner of the property comprised in L.R No. 209/11856.
- c. The Plaintiff is awarded the costs of this suit against the Defendant.

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF FEBRUARY, 2024

M. D. MWANGI

JUDGE

In the virtual presence of:

Mr. Muriithi h/b for Prof. Kariuki Muigua for the Plaintiff

N/A for the Defendant

Court Assistant; Yvette

M. D. MWANGI

JUDGE

