



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO.211 OF 2010

THANDE HOLDINGS LIMITED.....PLAINTIFF

VERSUS

STEPHEN KARANJA KUNGU.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

THE REGISTRAR OF TITLES.....3RD DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit on 4th May, 2010 seeking an injunction to restrain the 1st and 2nd Defendants from developing, transferring, alienating or otherwise dealing with Plot No. A 147 Sector 2 situated in Umoja Innercore, Nairobi (“the Suit Property”). It also seeks a declaration that the 1st Defendant’s title over the Suit Property is fraudulent.
2. The Plaintiff sued the Registrar of Titles as the 3rd Defendant. It seeks to have the Registrar directed to rectify the register to show the Plaintiff as the rightful proprietor of the Suit Property.
3. The Plaintiff is a limited liability company. The City Council of Nairobi, sued as 1st Defendant is the predecessor of the Nairobi City County.
4. The 2nd Defendant sold the Suit Property to Rachael Atieno pursuant to an agreement dated 1/10/1984 who subsequently transferred it to Mr. Peter Kariuki Thande (now deceased). Upon the death of Mr. Peter Kariuki Thande, the Suit Property devolved to the Plaintiff by transmission. The Plaintiff’s shareholders are the administrators of the estate of the late Peter Kariuki Thande.
5. The Plaintiff applied to serve the 1st Defendant through an advertisement in a daily newspaper. The court allowed this application on 9th December, 2011. An advertisement notifying the 1st Defendant of this suit was carried in *The Standard* of 23rd February, 2012. Despite being served, the 1st Defendant did not enter appearance or file defence. The court entered interlocutory judgment against the 1st and 2nd Defendant and directed the Plaintiff to set the case down for hearing.
6. The suit was heard by Lady Justice Gacheru on 28/7/2016. She directed the Plaintiff to file submissions. The Plaintiff’s submissions were filed on 29/8/2016. Lady Justice Gacheru was transferred from Milimani Law Courts before she wrote the judgment. The Plaintiff’s counsel agreed to have the proceedings typed after which he would highlight the submissions for me to write the judgment.
7. Mr. Aggrey Peter Thande, a director of the Plaintiff Company testified in court on its behalf. He adopted his witness statement which was filed in court on 10th March, 2014. He produced copies of the Plaintiff’s certificate of incorporation together with the company’s returns.
8. His deceased father, Peter Kariuki Thande bought the Suit Property from Rachael Atieno in the 1980s. He produced a copy of the agreement dated 1st October, 1984 between Rachael Atieno and the City Council of Nairobi confirming that the council was selling the Suit Property to Rachael Atieno. The letter from the Nairobi City Council dated 12th July, 1990 confirmed that the survey of the Suit Property had been completed and informed Peter Thande that he was expected to pay survey fees. He paid the survey fees and was issued a beacon certificate dated 18/7/1994.

9. The witness also produced documents relating to the grant of letters of administration in respect of Peter Kariuki Thande and Hannah Mumbi Thande who was his co-administrator of the Estate of the late Peter Kariuki Thande.

10. The Plaintiff's testified that sometime in 2010 its caretaker who was staying on the Suit Property presented to the Plaintiff copies of a certificate of lease and letter of allotment showing that the Suit Property had been registered in the name of Nyambura Kiiru. This lady had asked the caretaker to vacate the Suit Property.

11. On receiving the copy of the certificate of lease, the director went to the City Council and perused the records. He found that the records still reflected his deceased father as the owner of the Suit Property.

12. It was the Plaintiff's evidence that the 2nd Defendant subsequently refused to accept the Plaintiff's payment on account of rates. The director later learnt that the Suit Property had been transferred to Stephen Karanja Kung'u necessitating the amendment of the plaint to join the said Peter Karanja Kung'u as a party to this suit. He was served by substituted means but did not enter appearance or file defence.

13. The court has looked at the documents tendered by the Plaintiff in evidence. The certificate of lease the 2nd Defendant issued to Nyambura Kiiru is dated 28th October 2002. It is in respect of Nairobi/Block 83/14/376 and shows that the lease is for a term of 99 years less three days from 1/4/1978. A copy of the letter of allotment dated 10/5/2002 issued by the 2nd Defendant to Nyambura Kiiru was also produced. The reference reads:

Re: Allocation of Plot No. A 147- Umoja Innercore Sector II (Repossessed).

Re: Umoja Innercore Plot No. A147 Sec 2- A/c No. 27347.

14. Both the letter of allotment and certificate of lease issued to Nyambura Kiiru confirm that Plot No. A 147- Umoja Innercore Sector II and Nairobi/Block 83/14/376 refer to the same piece of land. This is also supported by the 2nd Defendant's letter dated 3/9/2007 whose reference reads as follows:

15. The 2nd Defendant allocated the Suit Property to the Peter Thande vide its letter of 12/7/1990 and issued a beacon certificate to the Peter Thande on 18/7/1994 confirming that he had inspected the beacons placed by the 2nd Defendant's surveyor.

16. The Plaintiff has been in possession of the Suit Property to date. There is no evidence that the 2nd Defendant repossessed the Suit Property from the Plaintiff. This is a case of double allocation.

17. The Plaintiff sued the 3rd Defendant for purposes of getting an order to be enforced by the 3rd Defendant but it does not seek any orders against the 3rd Defendant.

18. The court finds that having allocated the Suit Property to Peter Thande the 2nd Defendant could not have allocated the same Suit Property to Nyambura Kiiru. Nyambura Kiiru had no interest in the Suit Property capable of being transferred to the 1st Defendant.

19. The court finds that the Plaintiff has proved that it is the owner of the Suit Property and grants the reliefs sought at paragraphs (a), (b) and (c) of the Amended Plaint dated 5/7/2011.

20. The Plaintiff is awarded the costs of the suit.

Dated and delivered at Nairobi this 9th day of November 2017.

K. BOR

JUDGE

In the presence of: -

No appearance for the Plaintiff and 1st Defendant

Mr. Ondegu for the 2nd Defendant

Mr. V. Owuor- Court Assistant