



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. MISC. NO. 181 OF 1998

NAIROBI CITY COUNCIL..... PLAINTIFF

VERSUS

CHHAGAN LALA DIVARI W/O

CHHAGAN LALA..... DEFENDANT

DABER ENTERPRISES LTD.....APPLICANT/PURCHASER

THE COMMISSION OF LANDSINTERESTED PARTY

RULING

Coming up before me for determination is the Notice of Motion dated 11th November 2013 in which the Applicant/Purchaser seeks for an order reviewing the orders made on 1st November 2013 and that the court be pleased to order the interested party to register the vesting order issued on 24th June 1998 against the parcel of land known as L.R. No. 209/2389/58 (hereinafter referred to as the “suit property”).

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of Bernard Mwangi, a director of the Applicant, sworn on 6th May 2014 in which he averred that this honorable court failed to take into account the fact that neither the Plaintiff nor the Interested Party had opposed the said Originating Summons and as such there was no compelling reason as to why the lease could not be renewed. Further, he averred that the honorable court failed to take into account the fact that the Applicant/Purchaser was unable to ascertain the length of the lease in respect of the suit property until the time when the file for the suit property resurfaced at the Lands Office and as such cannot be blamed for having failed to apply for renewal of the lease before its expiry. He further averred that the honorable court did not consider the undisputed fact that the Applicant had spent money to acquire the suit property and paid the requisite rates and rent to the Plaintiff and the Interested Party. He added that the Honorable court failed to take into account the fact that the Applicant was unable to register the vesting order issued herein on 24th June 1998 due to unavailability of the file in respect of the suit property at the Lands Office and also did not make a finding as to whether the said vesting order ought to be registered against the title to the suit property. He further averred that there is no requirement under the Land Act that an application for extension of lease must be made before its expiry. On those grounds, he sought for the court to review the orders made on 1st November 2013 and substituted with an order allowing the Originating Summons dated 20th April 2013.

The Application is not contested.

On the issue of the review of the order issued by this court on 1st November 2013, the applicable law is as follows:-

Section 80 of the Civil Procedure Act provides that,

“Any person who considers himself aggrieved—

- a. *by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*
- b. *by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”*

Then **Order 45 Rule 1 of the Civil Procedure Rules, 2010** provides that:-

“(1) Any person considering himself aggrieved—

- a. *by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
- b. *by a decree or order from which no appeal is hereby allowed,*

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

Going by the legal provisions cited above, the Applicant is only entitled to a review of earlier orders if he has discovered new and important matter or evidence with, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time the order was made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. In this particular case, the Applicant is relying on “any other sufficient reason” and has enumerated the various aspects of the case which according to him the court did not take into account while arriving at the decision delivered on 1st November 2013. In the first place, he stated that this honorable court failed to take into account the fact that neither the Plaintiff nor the Interested Party had opposed the said Originating Summons and as such there was no compelling reason as to why the lease could not be renewed. The fact that the Application was not opposed does not of essence automatically mean that the Application should have been allowed. I considered the Application on merit to ascertain whether the Applicant had a right known under law pursuant to which this court could compel the Commissioner of Lands to extend the expired lease. I found none and could therefore find no legal basis to issue such an order. Even in this review Application, the Applicant has still not disclosed any specific legal provision to compel the Commissioner of Lands to extend the lease.

The Applicant has further averred that the honorable court failed to take into account the fact that the Applicant/Purchaser was unable to ascertain the length of the lease in respect of the suit property until the time when the file for the suit property resurfaced at the Lands Office and as such cannot be blamed for having failed to apply for renewal of the lease before its expiry.

He further averred that the honorable court did not consider the undisputed fact that the Applicant had spent money to acquire the suit property and paid the requisite rates and rent to the Plaintiff and the Interested Party. This issue boils down to the interest that the Applicant bid for when he sought to purchase the suit property. It would appear that the Applicant did not know what interest he was purchasing when he bid to purchase the suit property. This issue cannot be brought to influence this court

in reconsidering its earlier order. Whether or not the Applicant was aware of the interest he was buying does not change the fact that there is no right circumscribed in law that he can rely upon to compel the Commissioner of Lands to extend the lease.

The Applicant added that the Honorable court failed to take into account the fact that he was unable to register the vesting order issued herein on 24th June 1998 due to unavailability of the file in respect of the suit property at the Lands Office and stated further that the court did not make a finding as to whether the said vesting order ought to be registered against the title to the suit property. Without a valid lease, there is no point in registering any vesting order against the title. The core issue before the court was whether or not the Commissioner of Lands could be compelled to extend the lease. When this court made a finding that this cannot be done, then then the issue of registering a vesting order against the title could not arise for determination.

In light of the foregoing, this court finds that the Applicant/Purchaser has not shown any sufficient reason which warrants this court to review its decision delivered on 1st November 2013. Accordingly, this application is hereby dismissed with no order as to costs.

DELIVERED AND DATED AT NAIROBI THIS 18TH DAY OF MARCH 2016.

MARY M. GITUMBI

JUDGE