



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. NO. 278 OF 2011

RAKESH KUMAR ANAND..... APPLICANT

VERSUS

DIPAK KUMAR ANAND.....RESPONDENT

JUDGMENT

This suit was commenced by way of Originating Summons dated 10th June 2011 and filed on 13th June 2011 in which the Applicant sought for judgment to be entered in his favour on the following terms:

1. A declaration do issue to the effect that the Applicant is the sole owner of the parcel of land known as Land Reference Number 209/66/22 Original L.R. No. 209/66/6/2 registered as I.R. No. 5539/9 (hereinafter referred to as the “suit property”) by dint of a Declaration of Transfer dated 20th September 1991 executed by the Respondent and the Respondent be ordered to transfer the suit property to the Applicant;
2. That if the Respondent does not do so upon the expiry of 7 days from the issuance of the court order, the Deputy Registrar of the High Court do execute the transfer in favour of the Applicant and/or rectify the records by entering the Applicant’s name as the sole owner of the suit property;
3. In the alternative and without prejudice to the above, the court do issue an order that the Applicant is entitled to sole ownership of the suit property by way of adverse possession having resided and used the same for 22 years since 1990; and
4. A determination as to whether the Applicant is entitled to costs of these proceedings.

The Originating Summons is supported by the Applicant’s Affidavit sworn on 10th June 2011 in which he averred that he and the Respondent, who is his brother, were tenants in common in equal shares of the suit property until the year 1991 when the Respondent transferred to him his ½ share in the suit property by way of gift in consideration of mutual love and affection. He annexed a copy of the Certificate of Title as proof in which the term was indicated as 99 years from 1st April 1904 to 1st April 2003. In that Certificate of Title, the entry indicating the transfer into the joint names of the Applicant and the Respondent was entered on 10th February 1989. He further averred that since then to date, a period of 22 years, he has used the suit property as the sole owner to the exclusion of the Respondent and all others. He however stated that the Respondent had declined to execute the Transfer so as to effect the change. He further added that at the time the Respondent was transferring the suit property to him, it was charged to the East African Building Society for Kshs. 700,000/- which he settled in full without any input by the Respondent. He further mentioned that the suit property was also in rates arrears of Kshs. 152,488/-

which he paid off without assistance from the Respondent. He stated that he seeks to have the suit property transferred into his name as the sole owner to enable him to undertake further investments thereon.

The Originating Summons is opposed by the Respondent who filed his Replying Affidavit sworn on 6th July 2011 in which he averred that the suit property is owned jointly in equal shares by the Applicant and himself, contrary to the assertion by the Applicant that he is the sole owner thereof. He further asserted that there was a family arrangement consented to by both himself and the Applicant that he would transfer his ½ share in the suit property to the Applicant and in return, the Applicant would transfer his share in Land Reference No. 209/3692 to their mother Satya Rani Anand. He added that pursuant to that arrangement, both he and the Applicant signed Declarations of Transfer to that effect. He however added that when a transfer was sent to the Applicant to transfer his share in Land Reference No. 209/3692 to their mother, the Applicant changed his mind and refused to sign the transfer. He stated that as a consequence, he also declined to sign the transfer of the suit property in favour of the Applicant and the arrangement collapsed. He further stated that the Applicant has been using the suit property with his consent as co-owner and that the Applicant has never at any time claimed any adverse interest thereon. He further averred that he has paid the land rent to the suit property for 5 years and that he was in the process of obtaining an extension of lease from the Government of the Republic of Kenya. In proof of that assertion, he annexed a copy of a letter dated 10th June 2010 addressed to the Commissioner of Lands seeking extension of the lease on the suit property.

Both the parties filed their written submissions.

Several issues in this suit emerge for determination but one issue has emerged whose determination has the potential of settling this suit once and for all, more in the nature of a preliminary objection. This issue is in regard to the fact that the title deed to the suit property held by the parties was for a term of 99 years from 1st April 1904 to 1st April 2003. The term of the lease held by the parties has expired. The Applicant did not make any reference to this fact either in his pleadings or in his written submissions. The Respondent has alluded to this fact in passing, mentioning that he was in the process of obtaining an extension of lease from the Government of the Republic of Kenya. In proof of that assertion, he annexed a copy of a letter dated 10th June 2010 addressed to the Commissioner of Lands seeking extension of the lease on the suit property. None of the parties have confirmed that they have succeeded in obtaining an extension of their lease over the suit property which expired on 1st April 2003, more than 13 years ago. The position on an expired lease is as set out in **section 9(2)(c)(ii)** of the **Land Act** which provides as follows:

“private land may be converted to public land by reversion of leasehold interest to Government after the expiry of a lease”

I also wish to cite the decision of Osiemo, J. in the case of **Charles Mwangi Kagonia versus Dharj D. Popat & Another (2006) eKLR** in which he stated as follows:

“Once the 99 years lease between the Government and the defendant expired and he did not apply for extension which must be granted and executed by the lessee and lessor and registered before the expiry of the then current term the interest of the lessee ceases and the land becomes available for allocation by the Commissioner of Land who is at liberty to allocate the same to any deserving applicant following the laid down procedures.”

Going by these provisions, it is evident to me that the leasehold enjoyed by the parties to this suit expired and with the parties not having obtained an extension of that lease prior to its expiry on 1st April 2003, the suit property reverted to the Government of Kenya and is **“available for allocation by the Commissioner of Land who is at liberty to allocate the same to any deserving applicant following the laid down procedures.”** This essentially means that this court cannot issue an order that the Applicant be registered as the sole owner of the suit property as he seeks. Further, no claim for adverse possession lies for land that has reverted to the Government. In the circumstances, this suit fails and is

hereby dismissed. Each party shall bear their own costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF JULY 2016.

MARY M. GITUMBI

JUDGE