



REPUBLIC OF KENYA



In re Shantaben Devshi Mulji Shah & Anjali Devshi Mulji Shah (Ex Parte Applicants) (Environmental and Land Originating Summons E007 of 2023) [2024] KEELC 3375 (KLR) (24 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023**

LN MBUGUA, J

APRIL 24, 2024

SHANTABEN DEVSHI MULJI SHAH ... 1ST EX PARTE

APPLICANT

ANJALI DEVSHI MULJI SHAH.....2ND EX PARTE

APPLICANT

JUDGMENT

1. The Applicants commenced this suit by way of Originating Summons dated July 7, 2023. They seek an order vesting the property known as Flat Number 12 Land Reference Number 209/2168 Nairobi to themselves as joint owners as well as costs of the suit.
2. The Originating Summons are supported by the 1st Applicant's affidavit sworn on July 7, 2023. She avers that sometime in the year 2005, together with the 2nd Applicant who is her daughter and who now resides in the United Kingdom, they entered into an agreement for purchase of Flat No. 12 on LR No. 209/2168 from Arvind Kumar Vinubhai Patel and Kumud Arvind Kumar who were the vendors.
3. That upon payment of consideration, the vendors executed the deed of assignment of the lease in their favour to enable transfer of lease into their joint names.
4. Subsequently, they paid stamp duty on January 24, 2006 and were then informed by the advocate acting for both parties, Mr. Anil Joshi, that the original lease had been misplaced by the vendors and that they had only submitted a copy to him and were required to make an application for the issuance of a provisional lease but the vendors passed away in the United Kingdom before making the said application.
5. She adds that she has been in possession of the suit property since 2005 and has routinely paid for service charge as the beneficial owner of the said property.



6. The proceedings were filed ex parte with the sole witness being the 1st Applicant (PW1). Her evidence was that there is no title to the suit property, yet she has stayed in the said premises for a period of over 10 years.
7. I have considered all the evidence adduced herein. The Ex-Parte Applicants seek an order vesting the suit parcel to themselves. The Originating summons are brought under the provisions of Order 37 Rule 3 of the Civil Procedure Rules which stipulates that;

“A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the judge sitting in chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”
8. The Ex-Parte Applicants claim that they purchased Flat No. 12 on LR No. 209/2168 from Arvind Kumar Vinubhai Patel and Kumud Arvind Kumar. That even after paying stamp duty, the suit premises is yet to be transferred to them.
9. A Copy of lease dated December 28, 1989 indicates that Arvind Kumar Vinubhai Patel and Kumud Arvind Patel are the registered proprietors of the suit parcel. The court has also seen the deed of assignment dated December 30, 2005 between the applicants herein and the vendors of which there is evidence of payment of stamp duty.
10. Equity regards as done that which ought to have been done. In the case at hand, it appears that everything save registration of title had been done. In the circumstances, the suit is allowed such that an order is hereby issued vesting the property known as Flat Number 12 Land Reference Number 209/2168 Nairobi to the joint names of the Applicants herein. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Court assistant: Eddel

