



Ng'ang'a & 19 others (Suing as the Shareholders/ Members of Hawi Apartments Management Limited) v Hawi Developers Limited (Environment & Land Case 75 of 2015) [2024] KEELC 3520 (KLR) (11 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3520 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 75 OF 2015
LC KOMINGOI, J
APRIL 11, 2024**

BETWEEN

ANTHONY MUHIA NG'ANG'A & 19 OTHERS & 19 OTHERS & 19 OTHERS & 19 OTHERS & 19 OTHERS PLAINTIFF

SUING AS THE SHAREHOLDERS/ MEMBERS OF HAWI APARTMENTS MANAGEMENT LIMITED

AND

HAWI DEVELOPERS LIMITED DEFENDANT

JUDGMENT

1. Through the Originating Summons dated 30th January 2015, the Plaintiffs claim that they are the registered owners of 23 residential apartments erected on LR No. 209/14990/4 measuring approximately 0.2139 hectares and registered members/ shareholders of Hawi Apartments Management Limited having entered into sale agreements with the Defendant. As such, they are entitled to acquire titles and Reversionary Interest over the suit property.
2. They seek orders;
 - i. That the Defendant do deliver the original title document of LR No. 209/14990/4 together with the duly executed transfer documents necessary to facilitate registration of the title over LR No. 209/14990/4 in the name of Hawi Apartments Management Limited within seven (7) days from the date of the Court's order hereof.
 - ii. In the alternative, the Court directs the Registrar High Court to execute all the necessary transfer documents to facilitate registration of the title over LR No. 209/14990/4 in the name of Hawi Apartments Management Limited.



- iii. That the Land Registrar at Nairobi to effect registration of Hawi Apartments Management Limited as lessee for the unexpired term of 99 years from 1st April 1999 of all that parcel known as LR No. 209/14990/4 situate within the city of Nairobi in the Nairobi area containing measurement 0.2139 of a hectare or thereabouts and comprised in the Grant registered as No. I.R.90312.
 - iv. Costs in favour of the Plaintiffs.
3. Anthony Muhia Ng'ang'a in his Supporting Affidavit as the Chairman of Hawi Apartments Management Limited averred that the Defendant by dint of being the registered owner of the suit property LR No. 209/14990/4 erected 23 residential apartments sometime in 2006. Prior to this, a Management Company known as Hawi Apartments Management Limited was formed in 2005. After completion of the apartments, they were sold off to several parties and upon the purchase, the buyers complied with their obligations such as payment of stamp duty on the leases, valuation fees, registration of charges to facilitate registration of the leases in their names and acquisition of shares in the Management Company. Following successful registration of all the leases, the Management Company issued the members with individual share certificates awaiting transfer of reversionary interest from the Defendant to itself to hold on behalf of the owners of the apartments.
 4. However, the Defendant who has no residual interest over the suit property had refused to effect transfer of titles, transfer the Reversionary Interest as well as convey the instruments of office to the Management Company. The Defendant had also refused to avail the Management Company's Memorandum and Articles of Association despite numerous requests. The plaintiffs being the legitimate owners over the apartments were thus apprehensive that if the Defendant is not compelled to effect the transfer they would suffer irreparable loss and damage.
 5. The Defendant in its Statement of Defence sought dismissal of the suit on the grounds that on 14th July 2009, a Settlement Agreement was entered between it and a former Director who relinquished the suit property to it. As such, the current Directors of the Defendant were strangers to the alleged sale agreements and leases with the Plaintiffs. It added that for the Plaintiffs to be entitled to a share in the Defendant's company entitling them a reversionary interest, they ought to have paid Kshs. 1,000,000 to the Defendant as consideration which they had refused to do save for Jacob Omongi and Vikram Dave.
 6. The Plaintiffs in their response to the Defence stated that they were not privy to the alleged Settlement Agreement which was entered way after the Sale Agreements between the Defendant and the Plaintiffs which were executed between the years 2006 and 2008 and the actions of past and present Directors were binding on the company. They added that some of the Plaintiffs were illegally and dishonestly being forced by the Defendant to pay Kshs. 1,000,000 else the Defendant would retain consent to charge their properties.

Evidence of the Plaintiff

7. PW1 Anthony Muhia Nganga adopted his Supporting Affidavit as part of his evidence in chief and the produced the annexures as exhibits marked as P. Exhibit 1-5. He stated that at the filing of this suit he was the Chairman of the Management Company and that he had purchased apartment B10 from the Defendant for Kshs. 6,100,000 sometime in 2006. The sale agreement was signed by him and two Directors of the Defendant. A lease was subsequently signed on 14th February 2006 signed by the Manager of the Management Company and registered on 24th January 2006. He stated that Clause IV was on transfer of reversionary interest but the Defendant did not effect the transfer. He also testified



that they were issued with Share Certificates for the Management Company but were never registered as shareholders and did not have any control over their legally owned apartments.

8. On cross examination he stated that he was no longer the Chairman of the Management Company although he was aware that all the leases had been registered and the Defendant ought to have transferred the reversionary interest. He indicated that he had conducted a search of the Defendant and the Shareholders were Mr. and Mrs. Shivji.

Evidence of the Defendant

9. DW1 Shivji Raghvani, the Director of the Defendant adopted his witness statement as his evidence in chief and produced documents marked as D. Exhibits 1-7 as his evidence.
10. On cross examination he confirmed that he was the Director of the Defendant together with two other directors. Suit property LR No. 209/14990 was previously owned by Monica Wanyama who transferred it to the Defendant for a consideration of Ksh. 6,000,000. On 14th July 2009, there was a Settlement agreement between Ravilal and the current Defendant's Directors and by the time the agreement was signed there were apartments on the land and the Plaintiffs were some of the owners. He stated that Ravilal constructed the apartments through his company F-Con Ltd although he was neither aware that apartments had been sold, what the purchase price was, that stamp duty had been paid, nor that there were registered leases. He also stated that he was not aware that share certificates had been issued and that each was to get a share in the Company. He however confirmed that entry number 4 to 19 were entries of registered leases against the title and that entry number 19 was entered on 29th October 2008 before the settlement agreement. He stated that he was not aware whether Ravilal and Ramesh informed the Plaintiffs that they were selling their shares to his wife and him and neither did he inform the Plaintiffs that he was acquiring shares in the Management Company. He went on to indicate that he was not blackmailing the Plaintiffs into paying Kshs. 1,000,000 for the reversionary interest to be registered in their favour although he confirmed that there was a Deed of Rectification of Lease for Vikram Dave who had paid Kshs. 1,000,000.
11. On re-examination he confirmed that all the 23 apartments had been sold and they ought to have been sold before reversionary interest could be transferred.
12. At the close of the oral testimonies, parties were directed to put in final written submissions.

The Plaintiff's Submissions

13. Counsel submitted that following the purchase of the 23 apartments on LR No. 209/14990/4 the Defendant was to transfer both title and reversionary interest of the suit property over to the Plaintiffs through the Management Company known as Hawi Apartments Management Limited. However, the Defendant refused to transfer the reversionary interest and also declined to incorporate the Plaintiffs as shareholders of the management company despite numerous attempts to resolve the issue amicably and despite the fact that the Plaintiffs had fully paid the purchase price and other obligations owed by them. Counsel submitted that DW1 admitted that the Reversionary Interest had not yet been transferred to the Management Company and also confirmed that there were registered lease entries on the suit property's title. As such, the Defendant had no further interest on the suit property and should be compelled to transfer the Reversionary Interest to the Plaintiffs through the Management company. Reference was made to *Duci Annalisa & 32 others v Zubedi Beach Properties Ltd* (2009) eKLR, *Velani & 6 others v Naran & 2 others* (2021) KEHC 75 (KLR) and *Hong Kong Restaurant Ltd v Pabco Investments Ltd* (2009) eKLR.



The Defendant's Submissions

14. By the time of writing of this judgement, the Defendant had not filed its submissions.

Analysis and Determination

15. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are:
- i. Whether the Defendant ought to transfer of the reversionary interest to the Plaintiffs.
 - ii. Is the plaintiff entitled to the relief sought?
 - iii. Who should bear costs of this suit?
16. On whether the Defendant is entitled to transfer of the reversionary interest to the Plaintiffs, it is not in dispute that the Defendant is the registered owner of LR. No. 209/14990/4. It is also not in dispute that there is a management company known as Hawi Apartments Management Limited incorporated on 12th October 2005 as per the Certificate of Incorporation produced as an exhibit. The property LR No. 209/14990/4 has twenty three (23) apartments developed on it and sold off to different parties as confirmed by DW1 and PW1. After the sale of the apartments the Plaintiffs claim that the agreement was for the Defendant to transfer Title and Reversionary Interest of the property to them through the Management Company but this was never effected as confirmed by DW1.
17. From evidence, it is evident that the lease agreements between the Defendant and the Plaintiffs were similar save for the date of execution, unit being purchased and purchase price of the apartments. The lease reads in part:
- “ clause 4: The Manager has been incorporated for the purpose of managing the Estate and the lessees of each flat in the said Estate will simultaneously with the execution of this lease apply for membership in the manager such membership to remain an inseparable portion of this lease...
- ...
- To hold the same unto the lessees for the term of 99 years from the first day of April, 1999 (less the last seven days thereof) yielding and paying therefore the annual rental of one peppercorn (if demanded) payable on the first day of January in each year subject to the burden of any covenants entered into by the Lessor with the lessees of other flats in the Estate so far as such covenants are intended to bind the said premises or the lessees...
- The lessor shall at any time after registration of the leases in respect of all the flats in the Estate within sixty days of a prior notice in writing by the Manager transfer the reversionary interest in the said LR No. 209/14990/4 to the Manager and from the date of the Transfer of the said reversionary interest all the obligations and like benefits herein contained on the part of the lessor will vest in and be carried out by the Manager.”
18. DW1 while confirming that the reversionary interest in LR No. 209/14990/4 was yet to be transferred to the Plaintiffs, stated that he was not privy to that agreement on the grounds that the agreement was between the Plaintiffs and the former directors of the Defendant. On this issue, it is trite law that a contract is a binding agreement and a court of law cannot re-write it. Therefore, actions of former directors who entered into the contract as representatives of the Company are binding on the current directors since the agreements were with the company and not the directors in their personal capacity.



19. All the properties having been sold off and the lease agreement being clear on the respective parties' obligations, I see no valid reason, why the Defendant has continued to hold onto the reversionary interest in the suit property. I thus associate with Eboso J's holding in *Taj Mall Limited v Mohit Dhawan & 6 others* [2018] eKLR and find that Plaintiffs are entitled to the reversionary interest of LR No. 209/14990/4 and the Defendant is obligated to transfer the same to it.
20. In conclusion I find that the plaintiff has proved its case against the defendant on a balance of probabilities.
21. As per Section 27 of the *Civil Procedure Act*, costs follow the event. I find that the plaintiff is entitled to costs of this suit.
22. Accordingly Judgment is entered in favour of the Plaintiff as against the Defendant as follows;
 - i. That the Defendant is hereby ordered and compelled to deliver the original title document of LR No. 209/14990/4 together with the duly executed transfer documents necessary to facilitate registration of the title over LR No. 209/14990/4 in the name of Hawi Apartments Management Limited within Ninety (90) days from the date of this Judgement.
 - ii. In default, the Deputy Registrar of this Court do execute all the necessary transfer documents to facilitate registration of the title over LR No. 209/14990/4 in the name of Hawi Apartments Management Limited.
 - iii. That costs of the suit are awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11TH DAY OF APRIL 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

N/A for Plaintiff.

N/A for the Defendant.

Court Assistant – Mutisya.

