



Rayit & another (As Executors of the Estate of THE Late Tarsem Singh Rayit (also known as Tarsem Singh Riyit) v Chief Land Registrar & 3 others (Constitutional Petition E009 of 2023) [2024] KEELC 4773 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4773 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CONSTITUTIONAL PETITION E009 OF 2023

JA MOGENI, J

JUNE 13, 2024

**IN THE MATTER OF: ENFORCEMENT OF FUNDAMENTAL RIGHTS
AND FREEDOMS PURSUANT TO ARTICLES 2(1), 3, 10, 19, 20,
21, 22, 23, 40 AND 60 OF THE CONSTITUTION OF KENYA, 2010,**

AND

IN THE MATTER OF: ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE LAND ACT, 2012 AND THE LAND REGISTRATION ACT, 2012

BETWEEN

AVTAR SINGH RAYIT 1ST PETITIONER

KAMALJIT SINGH RAYIT 2ND PETITIONER

**AS EXECUTORS OF THE ESTATE OF THE LATE TARSEM SINGH RAYIT
(ALSO KNOWN AS TARSEM SINGH RIYIT**

AND

THE CHIEF LAND REGISTRAR 1ST RESPONDENT

DAYA SINGH S/O WAZIR SINGH 2ND RESPONDENT

SANTOK SINGH FLORA S/O DAYA SINGH 3RD RESPONDENT

MOHAMED AMIN S/O UMAR DIN 4TH RESPONDENT



JUDGMENT

Introduction

1. The Petitioners through a Petition dated 6/02/2023 prays for various reliefs being as follows: -
 - a. This Honourable Court be pleased to declare that:
 - i) with effect from 15/10/1973, the 4th Respondent held an undivided half share in LR No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20 in trust for Pritam Singh s/o Haram Singh and Tarsem Singh Rayit s/o Pritam Singh;
 - ii) following the death of Pritam Singh s/o Harnam Singh in the year 1994, the 4th Respondent held the above-mentioned undivided half share in LR No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20 in trust for Tarsem Singh Rayit s/o Pritam Singh;
 - iii) following the death of Tarsem Singh Rayit s/o Pritam Singh on 26/01/2006, the 4th Respondent held the above-mentioned undivided half share in the properties known as I.R. No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20 in trust for the Estate of the Late Tarsem Singh Rayit s/o Pntam Singh.
 - b. This Honourable Court be pleased to declare that the 1st, 2nd and 3rd Respondents have violated and infringed the fundamental rights of the Estate of the Late Tarsem Singh Rayit s/o Pritam Singh to property in relation to the said Estate's undivided half share in the properties known as LR No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20.
 - c. This Honourable Court be pleased to issue a permanent injunction restraining the 1st, 2nd and 3rd Respondents by themselves or through their agents, servants or any person acting under their instructions or directions from assigning, transferring, alienating, charging or otherwise dealing with or changing the current leasehold interests and the status of registration, ownership or possession of the properties known as I.R. No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20 in so far as it relates to the undivided half share owned by the Estate of the Late Tarsem Singh Rayit s/o Pritam Singh without reference to Avtar Singh Rayit and Kamaljit Singh Rayit (the Petitioners herein);
 - d. This Honourable Court be pleased to issue a mandatory injunction requiring the 1st Respondent to restore or reinstate the caveat dated 6/09/1974, which was registered against the properties known as LR No. 209/197/18, LR No. 207/197/19 and I.R. No 209/197/20 at the instance of the Late Pritam Singh s/o Haram Singh and the Late Tarsem Singh Rayit on 17/10/1974 until such time as the orders referred to in paragraph (f) below are enforced and or executed.
 - e. This Honourable Court be pleased to issue an order requiring the 1st Respondent to rectify the land register relating to the properties known as LR No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20 (“the Properties”) in order to list the following as the proprietors thereof until such time as the orders referred to in paragraph (f) below are enforced and/or executed;
 - i) Daya Singh s/o Wazir Singh and Santok Singh s/o Daya Singh, owning an undivided half share in the Properties; and



- ii) Mohammed Amin so Umar Din holding an undivided half share in the Properties in trust for the Estate of the Late Tarsem Singh Rayit.
- f. This Honourable Court be pleased to issue a vesting order vesting the undivided half share held by Mohammed Amin s/o Umar Din in the properties known as LR No. 209/197/18, LR No. 207/197/19 and LR No 209/197/20 in Avtar Sing Rayit and Kamaljit Singh Rayit (the Petitioners herein) as Executors of the Estate of the Late Tarsem Singh Rayit s/o Pritam Singh (“the Estate”) to hold, manage and deal with in accordance with their powers as Executors of the Estate subject to the probate and succession process in in Succession Cause No. 204 of 2007 (In the matter of the Estate of the Late Tarsem Singh Ravit (also known as Tarsem Singh Riyit)).
- g. General damages against the 1st, 2nd and 3rd Respondents for violation and infringement of the fundamental rights of the Estate of the Late Tarsem Singh Rayit s/o Pritam Singh to property in relation to its undivided half share in the properties known as LR No. 209/197/18, LR No. 207/197/19 and I.R. No 209/197/20;
- h. Costs of the Petition to be awarded to the Petitioners;
- i. This Honourable Court be please to grant such other order or direction as it may deem fit to facilitate the enforcement and execution of the above orders.

The Petitioners’ Case.

2. The Petitioners’ case is set out in the petition, the supporting affidavit sworn on 6/02/2023 and further affidavit sworn on 16/10/2023 filed in court. In summary, the Petitioner claims that the estate is the beneficial owner of an undivided half share in three properties (LR No. 209/197/18, LR No. 207/197/19, and LR No 209/197/20) on Park Road, Nairobi. These properties were jointly purchased by the late Tarsem Singh Rayit and his father, the late Pritam Singh, in October 1973 from Mohamed Amin. Despite the purchase, the title remained in Mohamed Amin’s name because the necessary transfer documents were never executed. Consequently, Mohamed Amin held the undivided half share in trust for Tarsem and Pritam Singh.
3. After Pritam Singh’s death in 1994, Tarsem Singh became the sole beneficial owner of this half share. The other half is owned by the 2nd and 3rd Respondents, who acquired it in 1971. The properties, although separate on paper, are treated as a single unit divided into two equal portions: Portion A (owned by the estate) and Portion B (owned by the 2nd and 3rd Respondents). The estate has been in uninterrupted possession of Portion A since 1973.
4. The petitioner alleges that the 1st Respondent, with the 2nd and 3rd Respondents, unlawfully attempted to exclude the estate from the properties by canceling a caveat placed by Pritam and Tarsem Singh in 1974, issuing a new lease to the 2nd and 3rd Respondents, and facilitating their claim to full ownership. The original caveat and sale agreement documents have gone missing from the Lands Registry. The removal of the caveat jeopardizes the estate’s ownership rights, which have been unchallenged for over 40 years.
5. The petitioners oppose the 3rd Respondent’s affidavit, arguing it misleads the court and fails to explain how the 3rd Respondent acquired the undivided half share originally owned by Mohamed Amin and sold to Pritam Singh and Tarsem Singh in 1973. The petitioners assert that the caveat registered on 6/09/1974, based on the Sale Agreement dated 15/10/1973, conferred proprietary interest to Pritam and Tarsem Singh, who paid the full consideration and had uninterrupted possession for 40 years.



6. The petitioners highlight the 3rd Respondent's silence on the unlawful removal of the caveat and lack of evidence proving the necessary legal steps were followed, such as gazetting the caveat removal. They emphasize discrepancies in the 3rd Respondent's documents, including inconsistent signatures and references to incorrect property numbers (LR No. 209/197/14 instead of 209/197/18, 19, and 20). The petitioners also point out that the late Tarsem Singh was not consulted about the lease extension in 2004, despite the caveat being in place.
7. Additionally, the Petitioners aver that the 3rd Respondent has not demonstrated how he lawfully acquired the half-undivided share from Mohamed Amin, nor provided proof of payment. The petitioners stress that the 3rd Respondent's actions and documents contain numerous inconsistencies and legal shortcomings, thus jeopardizing the estate's property rights.
8. The Petition is opposed by the 3rd Respondent through a Replying Affidavit dated 20/07/2023.
9. When the Petition came up for directions on 16/04/2024, the parties' advocates agreed that the petition be canvassed by way of written submissions and a judgment date was reserved.

Respondents' Case

10. The 1st, 2nd and 4th Respondents did not participate in these proceedings. They did not enter appearance or file any response to the Petition.
11. The 3rd Respondent opposed the Petition vide a Replying Affidavit sworn by Santokh Singh Flora on 20/07/2023. In summary, the 3rd Respondent, acting as the administrator of his late father Wazir Singh's estate, argues that the Petitioners' claims are unfounded and time-barred. He points out that the leasehold for the properties in question expired nearly 20 years ago, and without applying for an extension, the land reverted to the government. The Petitioners lack proof of ownership as they are not listed as co-proprietors in the suit property and have not presented the sale agreement supporting their claim. He emphasized that a caveat does not automatically confer ownership.
12. The 3rd Respondent contended that he legally sought and obtained a lease renewal as the estate administrator, fulfilling all necessary conditions. He argues that the court lacks jurisdiction to issue a vesting order for an expired leasehold, which is the responsibility of the National Land Commission.
13. Lastly, it is the 3rd Respondent's case that the Petitioners' failure to renew the lease within the required timeframe renders their claim invalid. The 3rd Respondent concludes that the petition lacks a reasonable cause of action and should be dismissed with costs.

Written Submissions

14. By the time of writing this Judgment, none of the parties had dutifully submitted.

Analysis and Determination

15. I have very carefully considered the Petition, supporting affidavit, further affidavit and the 3rd Respondent's Replying Affidavit. I have also considered the relevant constitutional and statutory frameworks. Similarly, I have considered the relevant jurisprudence on the key issues in the petition. I postulate that the issue for determination is whether the Petitioners are entitled to any of the reliefs sought in the Petition.



Whether the Petitioners are entitled to any of the reliefs sought in the Petition.

16. The Petitioners' case is mainly founded on Article 40 of *the Constitution*. Article 40 guarantees protection of personal property. In order to protect the right to property, a party must establish a proprietary right or interest in land as *the Constitution* does not itself create these rights or interests. In the case of *Joseph Ihugo Mwaura and Others v The Attorney General and Others* Nairobi Petition No. 498 of 2009 (Unreported), the Court, referring to section 75 of the former *Constitution* which is the equivalent of Article 40, observed that,

“*the Constitution* and more specifically section 75 does not create proprietary interests nor does it allow the court to create such rights by constitutional fiat. It protects proprietary interests acquired through the existing legal framework.”
17. The Petitioners assert that the Estate of Tarsem Singh Rayit and his father, Pritam Singh, hold an undivided half-share in properties known as LR No. 209/197/18, LR No. 209/197/19, and LR No. 209/197/20. This claim is based on a sale agreement dated 15/10/1973 with Mohamed Amin (4th Respondent), who retained the title in trust. The 2nd and 3rd Respondents own the remaining undivided half-share.
18. Historically, these properties, though separate by deed, have been treated as a single unit divided into two equal portions: Portion A (owned by the Estate of Rayit) and Portion B (owned by the 2nd and 3rd Respondents). The Petitioners support their claim with historical documents, including a white card showing initial ownership by Abdul Wahid, later transferred to Ashraf Begum and Abdul Ghafur as tenants in common.
19. Mohamed Amin, the 4th Respondent became the administrator of Ashraf Begum's estate and sold his undivided half-share to Pritam Singh and Tarsem Singh Rayit on 15/10/1973. A caveat was registered on 6/09/1974 by Pritam Singh and Tarsem Singh Rayit to protect their purchaser's interest. The Petitioners claim uninterrupted possession of Portion A since 1973.
20. The historical ownership of Abdul Ghafur's share is noted in the pleadings, highlighting a transfer by Zohra Malik to the 2nd and 3rd Respondents on 5/06/1971. Despite not providing the original sale agreement, the Petitioners provided various documents, including caveat registrations and two certificates of postal searches, both indicating expired lease terms on the properties.
21. On the other hand, the 3rd Respondent contends that the Petitioners have not provided sufficient proof of ownership since they are not listed as co-proprietors on the title and have not shown the agreement that forms the basis of their claim. He contended that the 2nd Respondent died on 17/09/1991. He highlighted that from the documents annexed to the Petitioners' supporting affidavit and the averments therein, the tenure under which the suit properties were a leasehold for a term of 99 years with effect from 1/01/1905. He added that once the leasehold interest in the property expired, unless the proprietor thereof applied for the extension thereof from the NLC, the same reverted to the Government. That it is therefore clear that the Petitioners herein are seeking reliefs over a leasehold interest that expired close to twenty years ago and thus have no cause of action at all.
22. As a rebuttal, the Petitioners contended that the 3rd Respondent's replying affidavit is only meant to mislead the Court as it does not explain how the 3rd Respondent acquired the undivided half share that was owned by Mohamed Amin s/o Umar Din and sold to the late Mr. Pritam Singh and Mr. Tarsem Singh. The Petitioners emphasized that the late Mr. Pritam Singh and Mr. Tarsem Singh fulfilled their



obligations under the agreement of sale by paying full consideration to the 4th Respondent and enjoyed peaceful and uninterrupted possession of the undivided half share of the property for 40 years.

23. The 3rd Respondent argues that the lease to the suit property expired in 2004 and therefore the same reverted to the Government while the Petitioners contend that the estate is the owner of the property and enjoyed peaceful and uninterrupted possession of the undivided half share of the property for 40 years. This is the issue to be resolved in order to determine whether the Petitioners are entitled to protection.
24. It is not in dispute that the lease to the suit property expired in 2004 and therefore the same reverted to the Government. There is no evidence before me that the estate of Pritam applied for renewal of the lease to properties known as LR No. 209/197/1/18, 19 and 20. The Petitioners have not claimed this either. It is the 3rd Respondent's claim that the Petition is founded from a lease long expired and is no longer subsisting.
25. Having carefully analyzed and reviewed the material that is before me, it is evident that the Petitioners' claim is pegged on a lease that was for a term of 99 years with effect from 1/01/1905. This has not been disputed. The leasehold tenure evidently expired on 1/01/2004. The term was not extended. There is no evidence that the Petitioners of the estate of the late Pritam Singh and Tarsem Singh sought for a renewal of the lease. The leasehold having expired on 1/01/2004, the Petitioners proprietary right or interest in the suit properties ceased. The substratum of the Petition therefore disappeared.
26. The obvious rights which the Petitioners or the Estate of the late Pritam Singh and Tarsem Singh or the 4th Respondent had as leasehold owners ceased as at 1/01/2004. The insurmountable hurdle which faces the Petitioners herein is that they cannot establish lawful occupation. Once the 99 years lease between the Government and the lessee expired and they did not apply for extension which must be granted and executed by the lessee and the lessor and registered before the expiry of the then current term the interest of the lessee ceases and once the interest of the lessee ceases 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. To this end, for the Court to grant the prayers sought would be an academic exercise in futility.
27. This Petition is a non-starter as the lease was no longer subsisting. For lack of a better word, the Petition has been overtaken by events following the expiry of the lease and therefore it would be futile to proceed and determine the same. In the case of *John Agufa & 3 others -vs- Chairman Selection panel for Recruitment of chair and members of Migori County Service Board & 2 others* (2020) eKLR, Mathews Nduma, J held where the petition had been overtaken by events, the court could not grant any orders sought as they would be in vain. He stated the petition was spent as it had been overtaken by events and proceeded to dismiss the same. The judge in the case stated: -

“This petition has been overtaken by events. This is a court of equity and is not given to issuing orders in vain. The court finds that this petition has been overtaken by events and is thus spent”

28. In a Ugandan case of the *Environment Action Network Ltd vs. Joseph Eryau*, Civil Application No.98 of 2005, the Court of Appeal stated: -

“Courts do not decide cases for academic purposes because court orders must have principal effect and must be capable of enforcement.”



29. Aside from the above, the Court notes that the 3rd Respondent does not expressly claim to own the suit property even though the certificates of postal search provided before the Court indicate that he and his late father are the registered owners. He just says that he legally sought and obtained a lease renewal as the estate administrator, fulfilling all necessary conditions.
30. I have gone through the documentation on record. From the same, as per the certificate of postal search dated 28/11/2018, the registered owner of the suit property is the 2nd Respondent and 3rd Respondent. The nature of the title is 'leasehold' as per the certificates of postal search produced before this Court. I do not see how the 2nd and 3rd Respondents gained proprietary interest in the suit properties known as LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20. I do not see how the 2nd and 3rd Respondents can contend to have obtained a valid extension of lease for LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20.
31. The firm of Maina Nyangena & Co. Advocates wrote to the Commissioner of Lands vide letter Ref: MN/SS/002/03 dated 11/08/2003, seeking to apply for extension of the lease for LR No. 209/197/1/14 Nairobi which was set to expire in 2004. Evidence shows that this letter was received on 12/08/2003. On 15/08/2003, the Commissioner of Lands wrote to the Director of City Planning, Director of Physical Planning and Director of Surveys regarding the extension of lease for LR No. 209/197/1. The said letter was copied to the firm of Maina Nyangena & Co. Advocates. On 16/09/2003, vide a letter ref: CPD/R/3644/209/197/1, the Director of City Planning Department did not object to the extension of lease on plot LR No. 209/197/1/14- Park Road. Vide letter ref: 11718/II/16 dated 29/07/2004, the extension of lease for LR No. 209/197/1 was approved subject to conditions provided therein.
32. I note that the firm of Maina Nyangena & Co. Advocates applied for extension of lease for LR No. 209/197/1/14 yet the Commissioner of Lands approved the extension of lease for LR No. 209/197/1. No evidence has been proffered to explain why this happened. I do not see how the request for renewal and extension of the lease for LR No. 209/197/1/14 came to be the approval for extension of lease for LR No. 209/197/1. It can be seen that the firm of Maina Nyangena & Co. Advocates did communicate to the Commissioner of Lands through a letter ref: MN/SS/001/03 dated 24/08/2005 that they obtained consent to extend lease for LR No. 209/197/1/14 – Park Road which the letter was wrongly reference as LR No. 209/197/1 instead of LR No. 209/197/1/14.
33. All we see is that from the blues, a letter dated 29/07/2004 approved the extension of lease for LR No. 209/197/1 for a term of 50 years with effect from 1/01/2004. Despite the firm of Maina Nyangena & Co. Advocates raising the issue of the extension of the wrong lease, the same firm went ahead and paid a sum of Kshs. 7,600.00 in fulfillment of the conditions for the Commissioner of Lands' approval. The receipt no. 0648187 dated 12/03/2007 indicates that the payment was for extension of lease for LR No. 209/197/1/18, 19 & 20. The money was paid by M/s Maina Nyangena & Co. Advocates. Then the 3rd Respondent adduced a letter of allotment dated 25/10/2007 which indicated that it was subject to the renewal of lease for LR No. 209/197/1/14. I reiterate that, as far as I am concerned, LR No. 209/197/1/14 is not the same piece of land as LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20. Those are different parcels of land. This goes to show that despite the discrepancies noted, the renewal of lease was for property known as LR No. 209/197/1/14 and not the properties in dispute in this Petition.
34. In as much as the Petitioners claim is said to have emanated from an expired lease, there is also no evidence before me demonstrating how the 2nd and the 3rd Respondent became the registered owners of properties known as LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20. The 3rd Respondent deponed that it was well within his right as the administrator of the Estate of



his late father to take steps within the law to obtain a renewal of the lease and the allegations that he violated the fundamental rights of the estate of the late Tarsem Singh Rayit have no legal or factual basis whatsoever. That document marked as SS3 shows that he fully complied with the law and has been granted a fresh allotment letter whose condition he has fulfilled. It is evident that the letter of allotment that the 3rd Respondent is relying on was issued in favour of land known as LR No. 209/197/1/14 and not LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20.

35. In my view, in absence of any documentation to support their alleged extension of lease for properties known as LR No. 209/197/1/18, 19 and 20, it cannot be said that the extension of lease for properties known as LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20 was valid or legal. The 3rd Respondent may have followed the law when applying for the extension of the lease for LR No. 209/197/1/14 but that is not the suit properties in this petition. The only conclusion one can reach is that the extension of lease for properties known as LR No. 209/197/1/18, LR No. 209/197/1/19 and LR No. 209/197/1/20 was done irregularly, if at all.
36. Be that as it may, it will be seen that the suit properties known as LR No. 209/197/18, LR No. 209/197/19 and LR No. 209/197/20 reverted to the government as at 2004, the leasehold having expired as it was for a term of 99 years with effect from 1/01/1904. None of the parties have brought evidence before demonstrating that any renewal of the said lease was approved and reflected on the register. Certificates of postal search dated 28/11/2018, 19/05/2022 and 9/11/2022 all indicate that the tenure term for LR No. 209/197/18, LR No. 209/197/19 and LR No. 209/197/20 is expired. Therefore, it is my finding that the Petitioners have not established a proprietary interest in the suit property which is worthy of protection by the Bill of Rights.
37. Flowing from the above and having considered the pleadings, it is in my view and I so hold that the Petition dated 6/02/2023 is without merit and the same is hereby dismissed with each party bearing their own costs.
38. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI, THIS 13TH DAY OF JUNE 2024

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MOGENI J

JUDGE

In the virtual presence of:

Ms. Muriuki for Petitioners

Mr. Menge for 1st Respondent

No appearance for 2nd - 4th Respondent

Ms. Caroline Sagina - Court Assistant.

