



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

LAND CASE NO. 11 OF 2011

RENE SCHILLER.....PLAINTIFF

=VERSUS=

CHARLES WABUKO.....1ST DEFENDANT

THE COMMISSIONER OF LANDS.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

J U D G M E N T

Introduction

1. The Plaintiff moved this court by way of a Plaint dated 28th February 2011 claiming for the following reliefs:

(a) A Declaration that the Plaintiff herein is the bona-fide registered proprietor of the Leasehold interest in the property known as KILIFI TOWNSHIP BLOCK IV/177 as stated in paragraph 14;

(b) In the alternative special damages of the sum of Kshs.7,234,475.00 as stated in paragraph 15 herein above, and;

(c) General damages for breach of contract and breach of the general guarantee as to entries at the Kilifi District Land Registry as to the correct Registered Proprietary details with respect to the property known as KILIFI TOWNSHIP BLOCK IV/177 as at 29th October 2008;

(d) Costs of and incidental to this suit;

(e) Interest on the above (b) at the rate of 18% per annum from 10.10.2008 until payment in full.

(f) Any other or further relief this Honourable court may deem just and fit to grant.

2. In the Plaintiff, the Plaintiff has averred that on 29th August 2008, he entered into an agreement with the 1st Defendant for the sale of Kilifi Township bloc IV/177 (the suit property) for Kshs.7,000,000 and the property was transferred to him; that in November 2010, upon making an application for an official search, the lands office refused to issue him with the search because the suit property was under investigations and that he has never been informed that his certificate of lease had been revoked.
3. According to the Defendant he is not aware of all the allegations raised by the Plaintiff in the Plaintiff, that he is not aware of any revocation of the documents that were in his possession and denied the claims of special damages or general damages
4. The 2nd and 3rd Defendants entered appearance on 30th March 2011 and filed a joint defence on 3rd February 2012. The 1st Defendant filed his defence on 27th April 2011 and acknowledged that the Plaintiff took possession of the suit property on 30th October 2008 having been registered as the proprietor of the same.
5. The 2nd and 3rd Defendants denied the averments by the Plaintiff.

The Plaintiff's case

6. The Plaintiff, PW1 appeared before me on 23rd July 2013 and produced documents in support of his case. The documents included the certificate of lease in respect to the suit property. The said certificate of lease was issued to him on 30th October 2008.
7. PW 1 informed the court how he assisted the Plaintiff to acquire the suit property. He stated that when they tried to do an official search after the suit property had been transferred to the Plaintiff, they were informed that the property was under investigations. However, the nature of investigations were never disclosed to them.

1st Defendant's case

8. The 1st Defendant admitted having sold to the Plaintiff the suit property for Kshs.7,000,000/-.
9. According to his testimony, he paid the requisite land rates, land rent and the requisite stamp duty. He was duly paid the purchase price by the Plaintiff and voluntarily transferred the property to the Plaintiff.
10. The 2nd and 3rd Defendants did not call any witness.

Analysis and Findings

11. This is a unique case in the sense that there is no issue before me for determination. The Plaintiff is in possession of a Certificate of Lease in respect to land known as Kilifi Township Block IV/177 which he purchased from the 1st Defendant.
12. The 1st Defendant is not claiming the land. Indeed, the 1st Defendant's case is that he transferred the suit property to the Plaintiff and he does not have a claim over it.
13. The 2nd and 3rd Defendants averred in their joint Defence that they are strangers to the issues raised in the plaintiff.
14. In view of what has been placed before me, and in the absence of any evidence of any wrong doing by the Plaintiff and the Defendants, I shall allow the Plaintiff in the following terms:

(a) A declaration be and is hereby issued that the Plaintiff is the bona fide registered proprietor of the leasehold interest in the property known as KILIFI TOWNSHIP BLOCK IV/177.

(b) Each part shall bear his own costs.

Dated and Delivered in Malindi this 20th Day of **December 2013**

O. A. Angote

Judge