



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO 464 OF 2000

LAW SOCIETY OF KENYA..... PLAINTIFF

VERSUS

COMMISSIONER OF LANDS1ST DEFENDANT

M/S LIMA LTD2ND DEFENDANT

UASIN GISHU LAND REGISTRAR3RD DEFENDANT

JUDGMENT

By a plaint dated 22nd February, 1999, Law Society of Kenya (hereinafter referred to as the plaintiff) sued the Commissioner of Lands (hereinafter referred to as the 1st defendant), M/S Lima Ltd (hereinafter referred to as the 2nd defendant) and Uasin Gishu Land Registrar (hereinafter referred to as the 3rd defendant). The plaint was amended on 19th May, 1999. The dispute, according to the plaint, is in respect of allocation of Eldoret Municipality Block 4/53, and Eldoret Municipality Block 4/55 (hereinafter referred to as the suit property) to the 2nd defendant, by the 1st defendant. The plaintiff's case, as pleaded, is that by dint, *inter-alia*, of section 3 of the Law Society Act, it has the legal right to sue on behalf of 100 members of the plaintiff at Eldoret. That it has similar rights to sue on behalf of other members of the legal profession in Kenya and members of the public in general.

The plaintiff further pleaded:-

(1) that the Commissioner of Lands not only acted *ultravires* his power under the Government Lands Act Cap 280 Laws of Kenya but also fraudulently and in breach of procedure as stipulated by the law.

(2) that the suit property has always been held by the Government of Kenya in trust for the plaintiff's members and members of the public generally. That the disposal of the suit property to M/S Lima Ltd was done in breach of the said trust and, therefore, unlawful.

(3) that issuance of the lease certificate of the suit property was thereby unlawful.

(4) that the disposal of the suit property was done secretly contrary to the provisions of the Government Land Act Cap 280 Laws of Kenya.

For those reasons the plaintiff seeks, *inter-alia*, orders:-

- (1) declaring that the disposal of the suit property is *ultra-vires* the powers bestowed on the Commissioner of Lands by the relevant statute and in breach of procedure.
- (2) directing the Commissioner of Lands to revoke the allocation.
- (3) that the Land Registrar do recall and cancel the certificate of lease issued to the M/S Lima Ltd.
- (4) that upon cancellation of the lease the same be reissued in the name of the Registrar of High Court as trustee for the plaintiff and members of the public.
- (5) that in the alternative the Commissioner of Lands and M/S Lima Ltd do hold the suit property in trust to the plaintiffs jointly and severally, and an order that the Registrar of the High Court be registered as a trustee of the suit property for the benefit of its members and members of the public.
- (6) for rectification of the register by deleting the name of M/S Lima Ltd as the registered owner of the suit property.

The defence of the 1st and 3rd defendants, as pleaded, is that:-

- (1) the allotment of the suit property to M/S Lima Ltd was open and lawful pursuant to the provisions of the Government Lands Act cap 280 Laws of Kenya.
- (2) the allotment of the suit property was not *ultra-vires* the statutory powers conferred by Cap 280 and not in breach of the procedure.
- (3) the allotment was neither irregular nor secret.
- (4) that M/S Lima Ltd registration is a 1st registration pursuant to the provisions of section 143 of the Registered Land Act (cap 300 Laws of Kenya).
- (5) Eldoret High Court premises does not form parcel
No Eldoret Municipality Block 4/53 and 4/55.
- (6) as a preliminary point of law, the suit against the 1st and 3rd defendant is incompetent, misconceived and not maintainable in law.
- (7) the plaint does not disclose a reasonable cause of action.
- (8) the Court premises prior to allotment to the 2nd defendant had been relocated to LR Block 10/149.

The defence of the 2nd defendant, as pleaded, is that:-

- (1) it is the first registered owner of the suit property and its title is thereby indefeasible by dint of the provisions of section 143 of the Registered Land Act (cap 300) Laws of Kenya.
- (2) that the plaintiff has not demonstrated that the suit plots have anything to do with the Eldoret Law Courts.

(3) the judicial department have been relocated by the Government to land parcel No Eldoret Municipality Block 10/149.

(4) neither the old Law Court building nor the new Court building in Eldoret are situated on the suit plots.

(5) the court has no jurisdiction to grant prayers sought in the plaint in any event.

At the hearing of the suit the defendants urged me, by way of preliminary objection, to dismiss the suit on two grounds:-

(1) That the plaintiff has no *locus-standi* to institute and/or prosecute this suit either on its own behalf, on behalf of its members and/or on behalf of the members of the public.

(2) That the suit is a non-starter and is incompetent as the plaintiff did not comply with the mandatory provisions of order I rule 8 and 12 of the Civil Procedure Rules.

It is common ground that the pleadings in this case closed on 19th May, 1999 by the filing of reply of defence. It is equally common ground that the suit property is registered, by way of a first registration, in the name of the 2nd defendant. No judicial discretion is sought.

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleading, and which if argued as a preliminary point may dispose of the suit. That was the observation of Law JA in *Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd* (1969) EA 696. I adopt the same as the correct proposition of the law. The same is still good law in the realm, and I so hold.

On the basis of the pleadings as set out hereinabove, I have been called upon to make a finding as to whether the two limbs of the preliminary objection are sound in law.

The first point to be decided is whether the plaintiff has the necessary *locus-standi* to file and prosecute the suit. *Locus-standi* signified a right to be heard. A person must have a sufficiency of interest to sustain his standing to sue in a Court of law. That was the holding in *BV Narayana Reddy –vs- State of Karnataka Air* (1985) Kan 99, 106 (The Constitution of India, ARD 226). I adopt the same as a correct proposition of the law and I so hold.

As I understand Mr Kahiga for the plaintiff the suit property has unlawfully been acquired by the 2nd defendant through the connivance of the 1st and 3rd defendants. For that reason, among others, the Law Society is mandated by its objects to come to court on its own behalf, on behalf of 100 Eldoret advocates and on behalf of the members of the public in general to vindicate their rights.

Mr Kahiga was of the view that the Attorney General has abdicated his responsibility by defending the Commissioner of Lands and the Land Registrar. That in those circumstances the Law Society has a duty to institute this suit as aforesaid.

As I understand Mr Mbugua for the 2nd defendant and Mrs Onyango for the 1st and 3rd defendants the test of *locus-standi* is embodied in HC Misc Application No 58 of 1997 – *Hon Raila Odinga vs Hon Justice Abdul Majid Cockar and Republic—vs- GBM Kariuki* Misc Cr Appl No 6 of 1994 which are authorities for the proposition that for a party to have *locus standi* in a matter he ought to show that his own interest particularly has been prejudiced or about to be prejudiced. If the interest in issue is a public one, then the litigant must show that the matter complained of has injured him over and above injury,

loss or prejudice suffered by the rest of the public in order to have a right to appear in court and to be heard on that matter. Otherwise public interest are litigated upon by the Attorney General or such other body as the law sets out in that regard.

The Law Society has not demonstrated to me, by the pleadings, that the preservation of the subject property is a legal right of an individual or especially the plaintiff. Equally it has not been demonstrated to me, by the pleadings and arguments, that the plaintiff rights have been injured more than the 30 million plus Kenyans. The plaintiff does not have individual right in the preservation of the subject matter, I find and I so hold. If the plaintiff has grievances, the same would only lie to the public office and institutions mandated under the Kenya Constitution and particularly section 26 thereof. I, therefore, find and hold that the Law Society of Kenya lacks the requisite *locus-standi* not only to institute the suit but also to prosecute the same in its own behalf of the public in general.

The second point to be considered is whether the suit is a non-starter. As I understood Mr Mbugua for the 2nd defendant and Mrs Onyango for the 1st and 3rd defendants the plaintiff failed to invoke the mandatory provisions of order 1 rule 8 and rule 12 of the Civil Procedure Rules.

There is a requirement under order 1 rule 8 of the Civil Procedure Rules that one or more persons may be authorized on behalf of or for the benefit of all persons so interested.

The Court is also required to direct the plaintiff to give notice of the institution of the suit to all persons concerned either by personal service or advertisement.

It is also mandatory by dint of the provisions of order 1 rule 12 that appearance of one of several plaintiffs or defendants require written authority signed by each of the numerous persons forming the group on whose behalf representative suit was/or is to be instituted as the case may be.

It suffices to say that both legal requirements were not fulfilled by the plaintiff before filing suit which in my considered view, is fatal. On the pleadings, and on the law, I find and hold both limbs of the preliminary objection are well taken and thereby succeed. The inevitable upshot is that the suit is dismissed with costs.

It is ordered accordingly.

Dated and delivered at Nakuru this 19th day of December, 2001

N.R.O. OMBIJA

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JUDGE



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