



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO. 161 OF 1991

JULIUS NJUGUNA NJERU.....PLAINTIFF

VERSUS

MWAURA KIRIMA.....DEFENDANT

JUDGMENT

Julius Njuguna Njeru, the Plaintiff herein, took out the Originating Summons dated 25th July 1991 in which he sought for the following orders against **Mwaura Kirima**, the Defendant herein,:

1. **That the Plaintiff be declared to have become entitled by adverse possession of over twelve years of whole of plot no.loc.17/Kaharati/T.149 and registered under the Registered Land Act Cap 300 laws of Kenya and situated in Kigumo Division, Murang'a District.**
2. **That the Plaintiff be registered as proprietor of plot no.loc.17/Kaharati/T.149.**
3. **That the costs of this originating summons be awarded to the Plaintiff.**

The Defendant denied the Plaintiff's claim. When the dispute came up for hearing learned counsels appearing in the matter recorded a consent to have the suit determined by affidavit evidence and by written submissions. The history of this case is very brief. The Plaintiff has deponed in the affidavit filed in support of the Originating Summons that on 22nd September, 1966, Watheiya Kirima, the widow of the late Kirima Mwaura, the registered proprietor of Loc.17/Kaharati/T.149 sold to him the aforesaid parcel of land for Kshs.100 and he immediately took occupation of the suit land. The Plaintiff avers that Kirima Mwaura passed away in 1960 and was not succeeded until 1984 when his son Mwaura Kirima, the Defendant herein filed a Succession Cause in Muranga vide R.M.C.Succ.Cause No.48 of 1984 after being cited by the Plaintiff. On 16th July 1991, the Defendant managed to transmit title no.loc.17/Kaharati/T.149 to his name.

The Plaintiff has also averred in his affidavit that the sale transaction he entered with Watheiya Kirima on 22nd June, 1966 was also witnessed by the Defendant and the then area Assistant Chief Evanson Waweru. The Defendant also knew that the Plaintiff was put into occupation of the aforesaid land since 1966. The Plaintiff has complained that since the Defendant obtained letters of administration in respect of the estate of Kirima Mwaura, deceased he has refused to transfer the land to him thus forcing him to take up these proceedings. It is not in dispute that the Plaintiff has been in occupation of the land in question since 1966. The Defendant admits that he became the registered proprietor of the suit land in 1991 hence time has not run against his title. He has alleged that his mother, Watheiya Kirima, who passed away in 1983 did not have capacity to sell his father's land in 1966 to the Plaintiff. It should be noted that the Defendant and the area Assistant Chief actually witnessed the late Watheiya Kirima and the Plaintiff execute the agreement for the sale of the land. It is true by that time the Plaintiff purchased the

land, the registered owner had passed on. During this period, the applicable law in succession matters was the Kikuyu Customary Law pursuant to Section 2 of the Law of Succession Act (Cap 160 Laws of Kenya). To conduct such transactions by a widow of a deceased owner was generally permissive and would generally be approved by the clan elders who in turn would inform the Land Registrar to register the necessary papers to have the land transmitted to the widow or the purchaser. It does not therefore lie in the mouth of the defendant to question the legality of the sale agreement between the late Watheiya Kirima and the Plaintiff. However, the suit before this court is that based on adverse possession. I have already stated that by the time the defendant obtained title to the land in question the Plaintiff had been in occupation for over twenty five years. That fact was within his knowledge even when he purported to succeed his father's estate. There is no evidence that the Defendant has attempted to evict or prevent the Plaintiff from the land in dispute. The doctrine of adverse possession goes against the title holder or his successors. By the time of executing the agreement, the late Watheiya Kirima and the Plaintiff the Kikuyu Customary Law permitted the duo to freely deal with the deceased land. The transaction was customarily recognized even without one obtaining a written grant as the case in estates falling within the Law of Succession Act. The consideration was paid in full for the purchase of the land in dispute in 1966 and what was remaining was to put the name of the Plaintiff in the register in place of that of the deceased. In the case of **Wambugu =Vs= Njuguna (1983) K.L.R 173**, the Court of Appeal at page 174 held inter-alia as follows:

“Where a claimant pleads the right to land under an agreement and in the alternative seeks an order based on subsequent adverse possession the rule is: the claimants possession is deemed to have become adverse to that of the owner after the payment of the last installment of the purchase price. The claimant will succeed under adverse possession upon occupation for at least twelve years after such payment.”

I have already stated that the estate of the deceased registered owner is governed by the Kikuyu Customary Law and not the Law of Succession Act and that is why the deceased's widow and son were lawfully allowed to deal with the deceased's property. There is no denial that the Plaintiff paid the consideration in full in 1966. By the time the defendant obtained title to Loc.17/Kaharati/T.149 by transmission in 1991, the Plaintiff had acquired title by adverse possession. The Defendant's title is not shielded in law or in equity.

In the end, I find the case in favour of the Plaintiff. I enter Judgment in favour of the Plaintiff and against the Defendant in the following terms:

- 1. Julius Njuguna Njeru is hereby declared to have acquired by adverse possession Loc.17/Kaharati/T.149.**
- 2. The Land Registrar is ordered to cancel the name of Mwaura Kirima from the register as the proprietor of Loc.17/Kaharati/T.149 and its place the name of Julius Njuguna Njeru be entered as the new proprietor.**
- 3. The defendant is ordered to pay costs of the suit.**

Dated, Signed and delivered in open court this 21st day of February, 2014.

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J.K.SERGON

JUDGE

In the presence of

Mrs. Kahiga h/b for Mr. Gacheru for Plaintiff

N/A for Mr.R.M.Kimani but with Notice