



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 355 OF 1996

WAMBUGU GATIBI.....PLAINTIFF

VERSUS

SAMUEL MURIITHI MUMAITHA DEFENDANT

RULING

The substantive suit is expressed in the Originating Summons dated 18th December 1996 in which Wambugu Gatibi, the plaintiff herein asked for the following orders:

- 1. A declaration under section 38 of limitation of Action Act that plaintiff/applicant herein has acquired title by adverse possession over land parcel No. GIKONDI/THIMU/676.***
- 2. An order that the plaintiff be registered as the proprietor of the said land parcel No. GIKONDI/THIMU/676.***
- 3. That costs of this originating summons be provided for.***

When served with the originating summons, Samuel Muriithi Mumaita, the defendant herein, took out the motion dated 11th August 2000 in which he applied for the summons to be struck out on the basis that the same disclosed no reasonable cause of action, frivolous and vexatious. The aforesaid motion was later withdrawn by the defendant. On 31st January 2008 this court perused the pleadings and pointed out that the suit has slim chances of success. Mr. Kingori, the Plaintiff's learned counsel applied for an adjournment to enable him take further instructions in the light of the court's comments. The issue which was to be dealt with was compensation for the developments made on the suit land by the plaintiff. It appears from the record that the court issued an order directing the Mukurweini Divisional Agricultural Officer to file a report on the value of crops on the suit land. A report was filed on 29th September 2008. In aforesaid report, the agricultural officer assessed the value of the developments put on the land in dispute at Kshs. 589,075/=. It would appear the parties were unhappy with the report, hence on 18th May 2010, learned counsels appearing in the matter recorded a consent order in which they called for another report to be made and filed in court within 60 days. On 12th July 2010 another report which assessed the developments on the suit land at Kshs. 126,016/- was filed. The Defendant is of the view he is ready to pay the plaintiff compensation as assessed in the later report i.e. Kshs. 126,016/-. The Plaintiff on the other hand is of the view that the correct assessment of the developments is per the valuation report of 29th September 2008 i.e. Kshs. 589,073/=. This court has now been called upon to making a ruling on the issue.

I have carefully perused the pleadings and considered the material placed before me. The record is very clear that, the Hon. Mr. Justice Makhandia, expressed his opinion as to the sustainability of the Originating Summons. The learned judge pointed out that the person whom the plaintiff wanted to buy land from i.e. Gerald Gatete died in 1998. The learned judge further pointed out that the defendant was registered as proprietor of L.R. No. Gikondi/Thimu/676 in 1991 while the suit against the defendant was filed in 1996. These comments prompted the learned advocates appearing in the matter to seek for an adjournment to enable them take further instructions on the way forward. It was suggested to the court that the Defendant was ready to compensate the plaintiff for the developments made on the suit land. That is what prompted the court to issue orders directing the Divisional Agricultural Officer, Mukurweini to value the developments on the land in dispute. The court's intention was to see to it that the dispute is expeditiously resolved. It would appear that the parties are not in agreement. What is before this court is the originating summons dated 18th December 1996. The Defendant has opposed the same by filing a replying affidavit he swore on 14th August 1998. It should be noted that there is no alternative prayer for compensation on the part of the plaintiff. Directions have not been taken under Order XXXVI of the Civil Procedure Rules (now Order 37) hence the suit is not yet ready for hearing. In the circumstances of this case I cannot make any findings on the reports because there is no prayer for compensation. This court cannot issue gratuitous orders, they have to be applied for. In my view, in the absence of any agreement, the assessment report are of no use to this court. Those reports may be used in evidence at the appropriate stage in these proceedings after the necessary amendments are allowed. A fair order in the circumstances is to direct the parties to take out the necessary steps to have the suit ready for hearing and or have it summarily determined in the manner authorized by law. Consequently the matter is marked as stood over generally with costs being in the cause.

Dated and delivered this 11th day of February 2011.

J.K. SERGON

JUDGE

In open court in the presence of Nguring'a for the Defendant and Mr. Kingori for the plaintiff.

J.K. SERGON

JUDGE