

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NARIOBI

CIVIL CASE NO. 593 OF 1999 (O.S)

JOSEPH MBUGUA KABUI.....PLAINTIFF

VERSUS

LUCAS KINORU MWICIGI.....DEFENDANT

JUDGMENT

The plaintiff brought his suit against the defendant by way of Originating Summons in respect of a parcel of land known as Chania/Kanyoni/910 for the resolution of several questions set out on the face of the application. The first question for determination was whether the plaintiff is entitled to be registered as the proprietor of the land in question under section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya on the ground that since 30th May, 1985 he had been openly, peacefully and of right in occupation of the said land for a period of over 12 years preceding the presentation of the summons. There was also the issue that the said parcel of land is registered in the names of the defendants. The position advanced by the plaintiff is that the occupancy has been done continuously as of right and without force from the plaintiff with the full knowledge of the defendants.

The key questions on the summons is whether by the said occupation the defendants title to the said parcel of land has been extinguished under Section 17 of the Limitation of Actions Act aforesaid. The other question is whether the defendant should execute a transfer and do all the acts necessary to convey the said title to the plaintiff as proprietor to enable him be registered as such proprietor and in default whether the deputy registrar should be authorized to sign all the baby on behalf of the defendant.

The Originating Summons is supported by an affidavit sworn by the plaintiff to which the defendant has filed a replying affidavit. Counsel appearing for the parties herein agreed that the issues herein be determined on the basis of the affidavits filed and written submissions made thereby. The brief facts are that the plaintiff charged the suit property to Kenya Commercial Bank for a financial facility. There was default and this property was sold at a public auction with the defendant emerging as the highest bidder. This was in August, 1985. In August, 1988 the defendants became the registered owner thereof. Subsequent thereto the wife of the plaintiff lodged a question against the title which however was removed by an order of the Chief Land Registrar made on 4th January, 1993. There was still another suit filed by the defendant herein this being HCC NO. 874 OF 2000 against the wife of the plaintiff herein. In a judgment delivered by Aluoch J, (as she then was) the court found for the plaintiff and directed that the defendant be evicted from the suit premises. The public auction and the subsequent registration of the land in the name of the defendant terminated the interest of the plaintiff under the registered Land Act. Even if that were not the case the plaintiff cannot say that his occupation of the said parcel of land was quiet and uninterrupted in view of the actions of his wife and the litigation attaching on the said property. There is also evidence that the Police were involved in the attempt to evict the applicant and or his wife from the suit premises and this equally points to the fact that his occupation was never suctioned by the defendant and cannot be said to be peaceful continuous and uninterrupted.

I am compelled to believe the submission by the defendant that the suit is only intended to serve the purpose of frustrating the defendant and denying him the use of the land. The defendant title cannot be

extinguished by the purported advance possession and in my assessment is still has a good title to the suit property under the law.

In view of the facts presented, evidence adduced and the circumstances attending to the subject matter the plaintiff cannot be said to have laid any basis to justify any orders in his favour. Accordingly the Originating summons herein is dismissed with costs to the defendants.

Orders accordingly.

Dated, signed and delivered at Nairobi this 20th Day of July, 2011

A. MBOGHOLI MSAGHA
JUDGE