



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 114 of 1996

SIMON KUNGU NJOGU .....PLAINTIFF

V E R S U S

DR. J. BEFFINGER .....1<sup>ST</sup> DEFENDANT

A. V. BEFFINGER .....2<sup>ND</sup> DEFENDANT

J U D G M E N T

The Defendants were served but did not enter appearance or file defence to the claim. The Plaintiff's case is that L.R. No. 1259/5 measuring 20.5 acres and situated in Matindiri Settlement Scheme in Olkolau in Nyandarua District is registered in the names of the Defendants following allocation in 1964 by the Settlement Fund Trustees "SMN1". The Plaintiff was allocated plot No. 68 in the Scheme which formed part of this larger land. "SKN2" is evidence of the allocation and payment to the settlement Fund Trustees by the Plaintiff. He sought to buy the land held by the Defendants but the negotiations broke down. The Defendants eventually abandoned their entire land which the Plaintiff took possession of and has openly, exclusively and without interruption cultivated it and lived on since 1964. When he filed this case on 18<sup>th</sup> January, 1996 the occupation had been for about 31 years. The suit was brought under **Order 36 rule 3D** and **sections 37 and 38 (1)** of the **Limitation of Actions Act (Cap. 22)** to be declared to have become entitled by adverse possession to the land, to be registered as the proprietor in place of the registered owners and for the Registrar of Titles to rectify the register and enter his name as the proprietor in place of the Defendants.

On the evidence I find the Defendants ceased to be in possession in 1964. The Defendants have not returned to the land, or made claim to it. They were since that time dispossessed of the land by the Plaintiff. The Plaintiff, I find, was in adverse possession and after the expiry of 12 years in 1976 the title of the Defendants became extinguished. (**Gatimu Kinguru -Vs- Muya Gathangi [1976] KLR 253**).

Consequently, it is declared that the Plaintiff has acquired by adverse possession an absolute title to the land in dispute and he is entitled to an order under **section 38** of the **Limitation of Actions Act** to be registered as proprietor of the land in place of the Defendants. The Registrar of Titles shall rectify the register in respect of the land, L.R. No. 1259/5, by substituting the names of the Defendants with that of the Plaintiff. Costs shall follow the event.

**DATED AND DELIVERED AT**

**NAIROBI**

**THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2010**

**A. O. MUCHELULE**

**J U D G E**