



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 28 of 2001

GABRIEL NJUE M'NTHIUBIA.....1ST PLAINTIFF

CILIACA CIANTHUNI NJUE.....2ND PLAINTIFF

VERSUS

SABASTIAN KIREU.....DEFENDANT

JUDGMENT

The two applicants filed this Originating Summons against Sebastian Kireu defendant.

The issues to be determined are:-

1. The applicants lived on Karingani/Mugirirwa/1031 for more than 12 years uninterrupted.
2. Have the applicants acquired ownership by reason adverse possession.
3. Should the applicants be registered as proprietors of parcel Karingani/Mugirirwa/1031.

The evidence as sworn in supporting affidavit shows that the applicants are husband and wife paragraph 3 of the affidavit it is sworn that in 1967 by agreement the respondent gave the Applicants authority to enter parcel No. Karingani/Mugirirwa/1031 and they developed the same as they deemed expedient. This authority was obtained after the Applicants had paid Shs.700. The applicants have developed the land extensively and have occupied the land for a period of over 33 years without any interruption. That on 5th and 10th March 2001 the respondent through his agent evicted the Applicant. The Respondent states that the Applicants were evicted under court order in Meru CMCC No.319 of 1982 **Between** the Respondent and one Gregory Mbaka brother to first Applicant. A ruling delivered in this case show that at the time of making the application by Applicants was found that the applicants had already been removed from the Respondent land the ruling was made on 1/4/2004. At the hearing the parties were permitted to lead oral evidence and to call witness.

The plaintiff gave evidence in cross examination of PW1 it appeared that there was intention to purchase the land by the plaintiff from the Defendant/Respondent but this transaction was not finalized. It also became clear that the suit in which an eviction order was obtained being Meru CMCC No.319/1982 was between defendant and one Gregory Mbaka brother to the first Applicant (Gabriel Njue M’Nthumbia) The Applicants were not given notice of that case. And also the order was/or eviction of Gregory Mbaka and his family. The defendant’s case was that he allowed Gregory Mbaka to settle on the land with a view to purchasing but Gregory Mbaka who was a relative of the Applicant brought them on the land and when the Respondent sued Gregory Mbaka he got an eviction order and everyone was evicted including plaintiff’s home. A witness called by the Defendant DW2 Gerald Mbole was one of the elders in arbitration suit between the parties. He knew the litigation referred to. He said that in the case at Chuka Court the applicants were witnesses. The “Green Card” on record shows that the suit land is a subdivision of another title and in February 1992 was registered in the name of Defendant. Thereafter on 14/3/2001 Gregory Mbaka Mathew registered a caution claiming “licence interest”.

Regarding the issues raised in the Originating Summons it is clear that the applicants have resided on the plaintiffs land with his permission for a long time. The copy of Green Card on record shows that the title in dispute was a subdivision of another parcel of land and in 1992 it was registered in the name of the defendant. The applicants appear to have been on land before Registration. In March 2001 one Gregory Mbaka Mathew registered a caution claiming interest as licencee. At the Trial the defendant was not able to explain how he got a warrant of court to obtain possession on 12/2/2001. The Defendant was not able to produce the alleged court order proceedings saying that he had no money to pay for copies. In any case the suit was between Defendant and Gregory Mbaka.

I have come to the conclusion that if the land was registered in he name of Defendant in the year 1992 the suit 319 of 1982 relates to this suit land before registration of the land or it was not a valid court order to authorize eviction of the Applicants in the year 2001. Therefore the evidence of the Defendant is discredited. I therefore find that the applicants did enter the suit land as pleaded with the authority of the Defendant. However this occupation was not adverse to the interests of Defendant as owner. There was money paid and the applicants have shown some receipts evidencing payments of money to advocate “for submission of land” Occupation of land in pursuance of sale agreement is not adverse until something happens to terminate the relating The applicants continued to possess the suit land until they were forcefully evicted by the Defendant in the year 2001. The applicants stay over that land long period with full knowledge and authority of the defendant they did develop the land, they build houses and planted cash crops. Evidence shows that when they were forcefully evicted they were not given any Notice to vacate. Their buildings were demolished and they left cash crops and the land which are still on the land being utilized by Defendant. Therefore the answer to issues is that the Applicants were in possession for more than 12 years but that the occupation was not adverse therefore they have not acquired ownership of the suit land and cannot be registered as proprietors of the land. However the law is that where a proprietor of land permits another to occupy and develop the land notice must be given to vacate and compensation is payable for such developments as has been permitted to be developed. This w the decision of House of Lords in the case of *Ramsden vs Dyson 1866 LR 1 HL 129* This case was also applied in Kenya in the case of *Runda Coffee Estates vs Usingh 1966 EA* The plaintiff would therefore be entitled to compensation but the same is not prayed for in this case.

I therefore dismiss this suit with no order as to costs.

It is so ordered.

Dated this 22nd April, 2008.

J. N. KHAMINWA

JUDGE

22/4/2008

Khaminwa – Judge

Njue – Clerk

Plaintiffs present

Defendant present

Read in open court.

J. N. KHAMINWA

JUDGE