



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

Civil Suit 3565 of 1994

1. Land and Environmental Law Division
2. Civil Practice and Procedure – directions order XXXIV r 8a, 12 Civil Procedure Rules
3. Subject of main suit – Land

Adverse Possession

LR Ndumberi/Tinganga/T165

1.7 acres

- i) Reconstituted file
 - ii) Applicant claim land in trust of family
- iii) Parties substituted on death

4. Application 9 January 2008

- i) Direction under order XXXIV r 8A, 12 Civil Procedure Rules

5. Directions by way of viva voce evidence

6. Case law – nil

7. Advocates:

C.N. Ngugi instructed by Mohammed and Kinyanjui & Co. Advocates for the plaintiff/applicant- present
Njoroge & Musyoka & Co. Advocates for the defendant/respondent - absent

BENARD THUKU 1ST PLAINTIFF

MUIRU THUKU 2ND PLAINTIFF

VERSUS

FRANCIS NJUGUNA THUKU1ST RESPONDENT

GRACE WANJIRU NJUGUNA 2ND RESPONDENT

RULING

DIRECTIONS ON ORIGINATING SUMMONS

ORDER XXXIV r 8a, 12 CIVIL PROCEDURE RULES

I: Background/Procedure

1. This is a reconstituted file. The original file went missing and has never been traced. The subject of the main suit is that of Land. It concerns a claim for Adverse Possession touching on land parcel LR Ndumberi/Tinganga/T165 for 1.7 acres.

2. The parties were:-

Bernard M. Thuku Applicant No.1

Muiru Thuku Applicant No. 2

Versus

Francis Njuguna Thuku the Respondent

3. Unfortunately the applicant No.1 and the respondent herein passed away. The suit abated against the 1st applicant. The second applicant continues to prove this suit. The respondent has since been substituted by Grace Wanjiru Njuguna the widow and legal representative of the respondent.

4. On the day called out for hearing of the application

9 January 2008, the advocates for the respondents were absent. The application proceeded for hearing under order IXb r 3a Civil Procedure Rules on this court being satisfied that the respondent was duly served but was absent.

II: Application 9 January 2008

5. The applicant prays that the suit by way of Originating Summons be heard by vivo voce evidence. The reason being that it is a contentious matter between the parties and affidavit evidence would not suffice.

6. I have noted from the proceeding that the parties are closely related to each other. That further the original litigants have since passed away.

7. I would therefore agree that there is need to hear this matter by way of vivo voce evidence. Under order XXXIV r 10 Civil Procedure Rules the Originating Summons would be treated as a plaint and the reply as a defence.

8. There will be costs of this application to the applicant to be paid by the respondent.

DATED THIS 10TH DAY OF APRIL 2008 AT NAIROBI.

M.A. ANGA'WA

JUDGE

C.N. Ngugi instructed by Mohammed and Kinyanjui & Co. Advocates for the plaintiff/applicant- present

Njoroge & Musyoka & Co. Advocates for the defendant/respondent - absent