



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Succession 326 of 2002

IN THE MATTER OF THE ESTATE OF MBOGO KIRIAMITI.....DECEASED

AND

CICIRIA MUTITU NJOGU.....PETITIONER

VERSUS

SALESIO MWANIKI KANDIE.....OBJECTOR

JUDGMENT

Civil Suit No. 44 (O.S) of 2006 was commenced by Originating Summons dated 10th May 2006.

The applicant as sued the administrator of the estate of Mbogo Kariamiti.

Applicant claims parcel of land known as Ngandori/Kiriari/2700 by virtue of adverse possession and also by having purchased it. The affidavit in support of the claims it is shown that the parcel is registered in the name of Mbogo Kariamiti as proprietor and that in 1989 the Applicant entered into the land and has developed the same. That in about 1995 he entered into sale agreement with the late Mbogo Kariamiti to purchase the said parcel for the sum of Shs.91,300/= and in addition to transfer applicants parcel No. Ngandori/Kiriari/2701 as further consideration. It is sworn that necessary Land Board Consent was obtained but the seller died on 5/6/2005 before the land was transferred to the applicant. The Respondent petitioned and obtained a grant of Representation of the estate of deceased estate. She has refused to proceed with the transaction and transfer the land to the Applicant. In addition to the evidence of affidavit the parties were permitted to offer oral evidence at the hearing. The applicant said on oath that he resides on parcel No.Ngandori/Kiriari/2700. He emphasized that he entered in 1989 and he developed the land. Then in 1995 he entered into an agreement to purchase the same from the deceased registered owner. The seller died before the transfer was effected but the provisions of Land Control Act Cap 302 were complied with. As far as I can see from the pleadings of the parties, there is no dispute about the purchase of land by the Applicant. Regarding the issues posed by the O.S:

(a) Whether the Applicant has been in possession of the land for a period exceeding twelve years continuously without interruption and or without force.

To answer this issue, it is to be noted that there is no evidence how the applicant entered into the land in the year 1989 whether it was adverse to the interest of the registered proprietor. It is to be however noted that the period between 1989- 1995 is only 6 years. Therefore the period of prescription had not passed.

Then the Applicant testified that he entered into an agreement to purchase the land. Therefore from 1995 the Applicant was occupying the land under the sale agreement, this was with agreement of the registered proprietor. Therefore it was not adverse possession. And all formalities were complied with except the Registration of the land in the name of Applicant. Applicant and then seller expired n 5/7/200. Therefore the Applicant has not proved adverse possession for 12 years continuously. Regarding issue number 2, the deceased's title did not extinguish at any time by his death. And the Administrator of his estate should finalize the transaction. Issue numbered 3 the applicant did not acquire land under Limitation of Actions Acts Cap 22. But on evidence which is clear and not controverted the Applicant did purchase the said land from the deceased He completed the payment of purchase price and obtained consent to exchange his plot 2701 with deceased plot 2700. And he is entitled to transfer the plot to him.

Judgment is therefore entered for Applicant against the administrator of estate the Respondent herein. The costs of this suit to be paid by the administrator of the deceased. Judgment for Applicant as a purchaser.

It is so ordered.

Dated this 8th April, 2008

J. N. KHAMINWA

JUDGE

10/4/2008

Khaminwa – Judge

Solomono – Clerk

Cecilia – Present

Read in open court.

J. N. KHAMINWA

JUDGE