



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KISII

Civil Case 54 of 2007

NYARIBO KERASO JUSTUS ..... PLAINTIFF

VERSUS

FRANCIS AMENYA NDUBI ..... DEFENDANT

JUDGMENT

The plaintiff stated in his plaint that he is legal the representative of the late Shadrack Nyaribo Momanyi, hereinafter referred to as “*the deceased*,” who died on 9<sup>th</sup> October 1993. At the time of his death, the deceased was the registered proprietor of land parcel number **north Mugirango/**

**Ikonge/1059** hereinafter referred to as “*the suit land*.” Soon after the death of the deceased, the defendant trespassed upon the suit land and started tilling the same. He is still occupying the suit land.

The plaintiff urged the court to issue an eviction order against the defendant and further prayed for a permanent injunction to restrain the defendant, his servants and/or agents from re-entering the suit land upon eviction.

The defendant was served with summons to enter appearance as well as plaint but he neither entered appearance nor filed any defence.

During the hearing, the plaintiff produced Letters of Administration Ad Litem issued to him on 14<sup>th</sup> May, 2007 in respect of the estate of the deceased. I may state that though the Letters of Administration Ad Litem gave the plaintiff capacity to file this suit, he is not the personal representative of the accused. A personal representative is the executor or administrator of a deceased person.

An administrator is a person to whom a grant of letters of administration has been made. The plaintiff also produced a title deed in respect of the suit land, (P.Exh.2). It was issued to the deceased on 28<sup>th</sup> February, 1990.

Mr. G. J. M. Masese for the plaintiff submitted that the plaintiff had, on a balance of probabilities, proved his case. He added that since the defendant’s acts amount to continuing trespass, the plaintiff’s suit was not time barred. He therefore urged the court to grant the relief as sought in the plaint.

**Section 7** of the **Limitation of Actions Act** Cap 22 states as follows:

***“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims, that person.”***

In this case, the defendant moved into the suit land in 1993 or thereabout. The twelve years period expired in 2005. No leave was sought to file the case out of time.

Even in a situation where a person is in a continuing trespass to another’s property, the property owner must still bring the suit within twelve years from the date when the trespass commenced.

I hold that the plaint’s suit is time barred and dismiss the same.

**DATED, SIGNED and DELIVERED at KISII this 27<sup>th</sup> day of June, 2008.**

**D. MUSINGA**

**JUDGE**

Delivered in open court in the presence of:

Mr. Ochwangi H/B for Mr. G. J. M. Masese for the plaintiff

N/A for the defendant

**D. MUSINGA**

**JUDGE**