



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

Civil Case 715 of 2003

BENARD KAGIA NJUGUNA PLAINTIFF

VERSUS

FRANCIS WAMBURURU NJAU DEFENDANT

JUDGEMENT

I: Procedure

1. The County Council of Kiambu established under section 28 of the Local Government Act Cap.265 as registered proprietor of Land parcel Karai/Karai/340 measuring 4.7 hectares allocated 6 acres to one Karanja Kamau. The said Karanja Kamau (now deceased) had two wives Wangui and Grace Wanjiru. House 1 and 2 respectively.

2. A dispute arose whereby the courts dealt with the dispute up to the court the dispute up to the court of appeal here. In the case of:-

Bernard Kagia V Mbuti Njoroge CA 70/1984

The Court of Appeal stated that the High Court had no powers to deal with the dispute. Only the County Council of Kiambu.

3. The matter is said to have been referred to the County Council Act Kiambu and settled.

4. According to the plaintiff herein he was allocated three acres. His step brother was also allocated three acres but had sold his share to the defendant Francis Wambururu Njau.

5. The said defendant placed a caution on his land and proceeded to rent out the land to other persons to use. The plaintiff filed this suit on 21 July 2003 seeking the removal of the caution and eviction of the defendant from using the land.

6. On the day called for hearing the defendant was absent. The hearing proceed under Order IXB r 3(a) Civil Procedure Rules that he had been duly served and was absent. It is not compulsory nonetheless for a defendant to attend to court where he has an advocate representing him.

II: Trial

7. The plaintiff prayed he be given the orders sought. He informed this court that any disputes between the parties was long settled by the County Council of Kiambu.

8. In the defence filed the defendant denied the allegations. He said that he had been on the land since 1975. That the suit is laid as it covers section 17 of the Limitation of Actions Act.

9. That this suit be dismissed.

III: Opinion

10. From the agreed issues filed and agreed on by the parties on 22 May 2007 my finding are as follows:-

- i) That the caution lodged by the defendant be removed
- ii) That the defendant be evicted from the land reference Karai/Karai/1373.
- iii) That it is not disputed that there may have been trespass on the said land.
- iv) The issue of Section 17 of the Limitation of Actions Act Cap.22 was not canvassed by the advocate for the defendant. I would accordingly reject this.

11. I accordingly enter judgment for the plaintiff against the defendant and grant him his prayers as prayed.

DATED THIS 19TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

S.N. W. Kinuthia instructed by Mwicigi Kinuthia & Co. Advocates for the plaintiff-present

G. Kamonde instructed by G. Kamonde & Co. Advocates for the defendant – present