



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 945 OF 2006

JANE WANJIRU KAMAU PLAINTIFF

VERSUS

BENSON WAMAI DEFENANT

JUDGMENT

I: Background of case

1. The plaintiff Jane Wanjiru Kamau is not related at all to Benson Wamai the defendant herein. She does though occupy land parcel No. LOC 10/Koimbi/T420 whereby the said land was originally registered in the name of the defendant's father.

2. In the evidence before this court, the plaintiffs husband had loaned Ksh.50/- to the defendants father. He failed to pay for the debt. The defendant father permitted the plaintiffs husband to occupy the land. When occupation occurred both the plaintiff and her husband lived peacefully on the land from 1965 to 1989.

3. The defendant began to demand a payment of Ksh.50,000/- in order that he may sell the land to her. She refused. He then decided to return Ksh.50/- to her as being the debt owned. She then refused. The matter went before the Land Disputes Tribunal (No.89/99). They gave an award to the plaintiff. Unfortunately they extended the jurisdiction and the award giving her the land was then set aside by the High Court of Kenya at Nyeri (HCCCA84/01) (Okwengu J).

4. The plaintiff filed this application to this High Court seeking adverse possession.

5. The defendant objected on the grounds that the said possession ceased on the land changing owners. The defendant had sold the land to a third party. He also said his father had transferred land to him as a gift.

II: Opinion.

6. The plaintiff came onto the land through her husband. They occupied the land well over 36 years.

7. The issue herein is no longer a debt on sale agreement in contract but possession. The plaintiff has shown she has been in possession for 36 years uninterrupted until the defendant attempted to sell the land.

8. It was the defendant's father who put the plaintiff and her husband in possession.
9. The occupation to the land is by the plaintiff who occupied the same and carried out developments.
10. It does not matter that title changes as long as the plaintiff was on the property. See the case of law of:

Public Trustee v Wanduru (1984) KLR (CA 73/02).

11. I would find that the plaintiff has been in continuous and open occupation of the suit property.

I accordingly enter judgment for the plaintiff as prayed with costs.

DATED THIS 23RD DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

L.N. Kinuthia instructed by L.M. Kinuthia & Co. Advocates for the plaintiff – present

J.N. Kirubi instructed by Kirubi Mwangi Ben and Co. Advocates for the defendant - present