



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

Civil Case 693 of 2006

MWANGI WAMBUGU PLAINTIFF

VERSUS

JAMES MWANGI MACHARIA DEFENDANT

JUDGMENT

1: Background

1. This Originating Summons is for determination on the question of the question of adverse possession.

2. Mwangi Wambugu, the plaintiff herein had bought the parcel of land LOC.14/Gakurwe 207 for Ksh.2,200/- on the 11 April 1966 from the late Mathi Mungunyu; the father of James Mwangi Macharia the defendant herein.

3. The plaintiff was put in possession of the land and began to develop and construct on the said land. To date the total value of development is at 1.548 million.

4. The plaintiff claims to have been on the suit land for over 40 years and prays he be awarded the land by way of adverse possession.

5. The defendant claimed the property was his. That his father had no right to sell his property without his consent. He wants possession of the said property. The matter has been before the various Chiefs, District Officers and the administration for hearing.

II: Opinion

6. The property section register and search certificate concerning the said property discloses the following facts.

- i) That the land was first registered in the name of (Mathi Mungunyu) Muchiri Mathu on 29.9.1966.
- ii) A land certificate was issued on 23 December 1991.
- iii) On 1 July 1976 a caution was placed by the plaintiff claiming a purchasers interest.
- iv) 18 April 1978 the defendant herein was registered and a land certificate issued on 26 April 1978.

7. Since 1966 the plaintiff has been on the land. His possession has been continuous and uninterrupted.

8. The impression the defendants gave was that he was at all times the first registered owner of the suit premises. This was not the case.

9. I rely on the case law of:-

Wambugu v Njuguna 1983 KLR 172

and Public Trustee v Wanduru 1984 KLR 314.

Concerning purchasers who have taken possession of land they had bought and lived on the land for over 12 years. The court have ruled depending on the circumstances of each case that such buyers of land are and can be in possession from the day the sale agreement becomes void.

I therefore find that plaintiff has proved his case on adverse possession and accordingly enter judgment for him with costs of the case to the plaintiff.

DATED AT NAIROBI THIS 23RD DAY OF JULY 2008.

M.A. ANG'AWA

JUDGE

W. Gichuki instructed by Waiganjo Gichuki & Co. Advocates for the plaintiff - present

James Mwangi Machria –Respondent/Defendant in person - present