



REPUBLIC OF KENYA

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

Civil Case 984 of 2006

JOSEPH NDUATI MUMU.....PLAINTIFF

VERSUS

PETER MUKUNYA MUMU.....DEFENDANT

RULING

1: Background of application for Injunction dated 18.9.2006

1. The Plaintiff herein stated that the suit land known as LR Loc. 19/Gacharageini/587 was registered in the name of his brother Peter Mukunya Mumu the defendant herein. That their late father informed the defendant to give him one acre of the land. The defendant agreed and went further to say, if the defendant could sell his portion remaining in the land for Ksh.70,000/-.

2. The plaintiff agreed to this and paid Kshs.70,000/-. The plaintiff planted tea on the suit land. This occurred sometime in 1984, when their late father passed away and thereafter.

3. The plaintiff saw, in 2006 people walking within the said area. They then appeared to be inspecting the land to purchase. He – the plaintiff filed this suit for adverse possession and then prayed through an injunction for orders to restrain the said defendant from selling the land. That he acquired the premises through adverse possession.

4. The question arises - should an injunction issue restraining the defendant from dealing with the said land?

5. In reply the defendant stated that the arrangements had been for the plaintiff to look after their ageing mother of 106 years old. That the plaintiff was to support their old mother by planting tea on the suit land and the proceeds would be used on the said mother. In 2003, the defendant realized the plaintiff's family was mistreating their mother. He then removed the mother to live with him. At such, the land was intended to be leased out by him. Instead the plaintiff filed this suit fearing he would no longer have an income.

6. The plaintiff's prayer for an injunction should therefore be dismissed

and not be allowed has therefore been prayed.

II. Findings

7. The Plaintiff does not live on the suit land. There is nothing to show this. A house was built in 2000

but the defendants disputes this and says it was in 2003. The house belongs to the son of the plaintiff.

8. Should an injunction be issued? As the probability of a third party being brought into lease the land may complicate this case, I am of the view that injunctions do issue restraining the defendant from interfering with the suit land pending the hearing of the Originating Summons herein.

9. There will be costs to the Plaintiff.

Dated this 16th day of May, 2007 at Nairobi.

M.A. Ang'awa

JUDGE

Advocates:

S.K. Gichigi for Gichigi Burugu & Co. Advocates or the plaintiff/applicant - present

T.M. Kuria, holding brief for M. Marete for Kinoti & Kibe Co. Advocates for the defendant - present