



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 607 of 2004 (OS)

1. Land and Environmental Law Division

2. Subject of main

2.1. Land LR 36/111/3111 Nbi

2.2. Adverse Possession

3. Originating Summons

3.1. Filed 10 June 2004 dated 29 April 2004

3.2. Alternative service

Kubo J (27 October 2005)

4. Hearing – affidavit evidence (Order IXb r 3 (a) Civil Procedure Rules

4.1. Plaintiff in possession of suit since September 1974

5. Judgment – Adverse Possession granted

6. Case law - Nil

7. Advocates

1. M.A. Khan for M.A. Khan & Co. Advocates for the plaintiff

2. Mohamed Afzal the defendant

MOHAMUUD ABDULAH AHMED PLAINTIFF

VERSUS

JUDGMENT

I: **PROCEDURE**

1. The plaintiff herein Mohauud Abdullahi Ahmed; filed this Originating Summons under section 38 of the Limitation of Actions Act Cap.22 Laws of Kenya

in which he seeks Adverse Possession for a property that he has been in possession for over 12 years.

2. The said property situated in Eastleigh Area of Nairobi being LR 36/111/3111 Vol.39 folio 313 file 12287, 50 feet by 100 feet is registered in the name of Mohamed Afzal (the defendant herein).

3. The whereabouts of Mohamed Afzal was unknown. The plaintiff applied for substitutive service. This was granted to him (Kubo J

27 October 2005). By an advertisement in the Nation Newspaper of

18 January 2006 the said defendant having been duly notified through the press did not enter appearance nor file his defence.

4. This hearing was commenced under order IX b r 3(a) Civil Procedure Rules namely that the plaintiff being duly served (by way of substantive service) was absent during the trial.

II: **TRIAL**

5. The trial proceeds under affidavit evidence. It actually states the plaintiff entered into possession of the suit land in 1974. He had in the years since never heard or seen the defendant.

6. From the document annexed therein the defendant had purchased the piece of property on 16 February 1967 and is therefore the owner of the said a property.

III: **FINDING**

7. I am satisfied that the plaintiff has been on the property for over 12 years enjoying peaceful occupation and uninterrupted occupation.

8. I hold that the said plaintiff has acquired Adverse Possession and would accordingly have title to the whole share of the suit land which has now been extinguished under section 17 of the Limitation of Actions Act Cap.22 Laws of Kenya.

9. I award costs to the plaintiff.

Dated this 20th Day of June 2007.

M.A. ANG'AWA

JUDGE

M.A. Khan for M.A. Khan & Co. Advocates for the plaintiff

No appearance for the advocate for the defendant