



REPUBLIC OF KENYA

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

Civil Case 991 of 2002

1. Land and Environmental Law Division

2. Subject of main suit: land ownership

Adverse possession

3. Background

3.1 Plaintiffs sues defendant in Adverse Possession

3.2 Defendant son/or son in law to seller of land

3.3 Plaintiffs bought land for KShs.500/- being 227 feet in 1970.

3.4 Defendant No.1 filed suit to evict plaintiffs and 8 others.

i) HCCC 1324/83 – transferred to lower court

ii) Suit against Defendant and 6 others for eviction

iii) Defendant No.1 sold land to Defendant No.2 who sold land to
Defendant No.3

3.5 Defendant 1 and 2 suit withdrawn

3.6 Defendant No.3 prays suit be struck out on technicalities against them

3.7 Defendant No.3 claims he has indefeasible title.

4. Held

4.1 Suit should not have been withdrawn against 1 and 2 defendants

4.2 Principle of law:-

whilst the suit is pending no concerned land should be transferred where this is done at the peril of the

lawyer.

Section 52 Mulla – Transfer of Property Act

Belgo Holding v John Astrong Njogu & Others

Hccc266/05.

4.3 Other related cases.

5. Case law text book

a) Mulla on the Indian Transfer of Property Act 1882

6. Advocates:

D. Nyakundi for O. Nyakundi & Co. Advocates for the plaintiff.

A.O. wandabu for Ebosso & Wandabu Co. Advocates for the defendant

CLEMENT KUGURU.....PLAINTIFF

V E R S U S

KAMAU NJUGUNA.....1ST DEFENDANT

JAMES JOSEPH CHEGE.....2ND DEFENDANT

KAWANGWARE FRIEND CHURCH.....3RD DEFENDANT

J U D G M E N T

I. Background

1. The main suit concerns land being LR Dagoretti/Riruta/31849 whereby Clement Kuguru seeks adverse possession.

2. The said Clement Kuguru (the plaintiff herein) stated in his pleadings that he had bought land from one Kariuki Waigiria measuring 229 feet for KSh.500/= on the 21st October 1970. This land was originally known as Dagoreti/Riruta/184. The said Kariuki Waigiria passed away in 1983. His son in law, the 1st Defendant herein filed suit being HCCC 1324/83 seeking order to evict the Plaintiff from the land together with 6 others buyers. The suit was transferred to the Chief Magistrates Court. To date it appears it may not have been persecuted.

3. In the process of HCCC 1324/83 pending in court, the 1st Defendant sold land to one James Joseph Chege the 2nd Defendant who too sold to M/s Kawangware Friends Church.

4. The third defendant has made and or has filed three applications praying for this suit to be dismissed. By an application of 3rd June 2002 seeking to dismiss this suit Rimita J on 7th March 2003. The 3rd Defendant filed an application of 14th April, 2004 seeking to struck out the suit against them. (The 1st and 2nd Defendants having not entered appearance.) The application coming for hearing before me Mugo J. has refused on grounds that the orders sort contradicted the ruling of Rimita J. On the day

called out for hearing the defendant No.3 filed a preliminary objection seeking for the suit to be struck out. This application was dismissed as being Res judicata.

5. By an application of 20th June 2005 the said orders of Rimita J. was varied to the extent that status quo be maintained (4th April, 2006). That the suit against the 1st and 2nd defendants be withdrawn.

II Trial

6. Should the defendant be granted adverse possession?

7. It is a fact that defendant No.1 sold land to defendant No.2 who in turn sold land to defendant No.3. This is not disputed.

8. It is also not disputed that whilst another suit was pending being HCCC1324/83 the sale of land took place.

9. I would note that under the Indian Transfer of Property Act Section 52, where there exists a dispute in court over land, that such land ought not to be transferred until the said dispute is heard and determined. Any transfer of the suit land to a third party as it did occur in the case is null and void. The law as it stands therefore is that any transfer from defendant 1 to Defendant 2 to Defendant 3 was and is dully unlawful.

What therefore occurs to plaintiff's claim?

IV. Adverse Possession

10. The claim for adverse possession has been shown that the Plaintiffs have been on the land measuring 229 feet since 1970. Even when the earlier suit was filed 13 years had lapsed.

11. I accordingly grant him his prayers and hold that Clement Kuguru is entitled to adverse possession.

V. Locus of the 3rd Defendant

12. The suit should never have been withdrawn against the 1st and 2nd defendants. The two defendants never entered appearance nor filed any replying affidavit. The third defendant locus should have been taken on appeal. Decisions made by the two Hon. Judges were never appealed against and I would not interfere with the same.

VI. Conclusion

13. I award the plaintiffs costs of this suit. Judgment be and is accordingly entered in favour of the Plaintiffs.

Dated this 19th day June of 2007 at Nairobi

M.A. ANG'AWA

J U D G E

D. Nyakundi for O. Nyakundi & Co. Advocates for the plaintiff

A.O. Wandabu for Eboso & Wandago Advocates for the defendant