

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 4 of 2007

NICHOLAS MANEGENE KIMANJUI.....PLAINTIFF

VERSUS

LAZARO MUGO MUNYI.....DEFENDANT

RULING

The Chamber Summons filed in court on 3/4/2007 seeks orders that this suit be struck out for being an abuse of court process, on the grounds that the suit is statute barred and the plaintiff lacks locus standi to file suit and also that no leave was obtained prior to the filing of this suit. The application is supported by an affidavit of Applicant which shows that the defendant Lazarus Mugo purchased the parcel Mutithi/Chumbiri/332 from late Njirata Kimanjui Ngiri on 29/4/1969 and right of the plaintiff as administrator to recover possession expired after expiration of 12 years. A green card is exhibited showing that the defendant was proprietor on 26/10/72 and on 24/4/99 the title was closed upon subdivision of the title into nos. 813 and 814. The plaintiff has also filed replying affidavit where he says, without giving details that the fraud was discovered in the year 2004 when the defendant filed a Mwea Land Disputes Tribunal case. He has also exhibited a grant issued by court to him in the year 2006, in the estate of deceased, apart from a caution registered in 1978 by Njoro Kinyanjui Njuru claiming the beneficiary interest, there is no other challenge to the Defendant title section 7 of Limitation of Actions Act Cap 22 provides no claim for possession of land shall be filed after the expiration of 12 years.

I find that there is no reason shown by the respondent to warrant an order to sustain the suit which lacks a cause of action. I allow the application and grant orders sought with costs to the Applicant.

Dated this 23rd July, 2007.

J. N. KHAMINWA

JUDGE

23/7/2007

Khaminwa – Judge

Njue –Clerk

Mr. Momanyi HB for Kiama.

J. N. KHAMINWA

JUDGE