



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

**Civil Case 4712 of 1990**

1. Land and Environmental Law division
  2. Subject of main suit (1990) Specific Performance
    - 2.1 Multinational company exchanges its land with a self help land buying company
    - 2.2 Total members 303
    - 2.3 Only 27 members to date decline to move from land
    - 2.4 Claim for specific performance ie to evict the 27 persons from land
  3. Defendants – Title defence and counter-claim.
    - 3.1 They were never registered owners of land.
    - 3.2 Never entered into sale agreement with plaintiff
    - 3.3 Claim by way of Adverse Possession
    - 3.4 Herds of Livestock taken away 475 cattle
- 400 sheep
- 40 goats

Payments compensation required

4. Part heard Mbitio J 2002 to 2003.
  - 4.1 Order XVII r 10 Civil Procedure RulesHearing proceeds from where it left off.
  - 4.2. Defendants advocate absentOrder IXb r 3 (a) Civil Procedure Rules
5. Held:

6. Case law
7. Advocates

Njagi & Co. Advocates for the plaintiff

Karanja & Co. Advocates for the defendants

**KAKUZI LIMITED .....PLAINTIFF**

**VERSUS**

**DANSON KARIUKI MWAURA & 6 OTHERS ..... DEFENDANT**

**JUDGMENT**

1: Background of case

1. Kakuzi Limited is a limited company with registered offices in Thika. It deals with Agriculture and Livestock business on a Commercial basis and owns land in the Makuyu Thika area.

2. The defendants 1 and 7 are office bearers of an organization registered under the registration of Business names Act and known as Gaicanjiro Self – Help farm.

3. The said defendants 1 and 7 had members being 8 -9 11- 26. defendant No.10 is no longer and was never a member.

4. The problem that arose is that in 1968 the office bearers 1 – 7 bought land for farming purposes being LR10739/2. This parcel of land was situated right in the middle of land owned by the plaintiff being LR11674. The plaintiffs approached the defendants and requested whether they could exchange their land of 1160 acres with theirs. PW1 examined the said new land and noted that the soil was very suitable for planting. It was red in texture and better than the black cotton soil. It was near the road and had access to water. The office bearers held various meeting with the administration. After acceptance to this proposal with their 303 members 42 declined to move. This number later reduced to 26 members who comprise the 8<sup>th</sup> to 26<sup>th</sup> defendants herein. (Save for 10<sup>th</sup> defendants.)

5. The parties entered into an agreement on 24 February 1986 whereby the plaintiff company was to give an equal amount of land in exchange to the defendant's members company of 1,600 acres. This would be sub-divided into 5 acres each.

6. A total of Ksh.2.5 million would be paid as compensation for the development. This included building schools, road, sub-division of the land into five acres each.

7. There is still a total of 1.5 million yet to be released.

III: Dispute

8. The dispute in this case arose when 26 members declined to move. The plaintiff company obtained injunction orders not to allow them to graze their cows in any place not demarcated. The 26 discharged their livestock which the defendants claim were in effect 40 goats, 400 sheep and 475 herds of cattle which are still missing. A further injunction against the plaintiff company was granted by the court.

9. The plaintiff advocate was alleviated to the High Court

Bench. New advocates M/s Ndungu, Njoroge and Kwach took over the case.

10. A plaint having been filed in 1990 was defended by the defendants on 7 January 1991 and later amended on 15 November 1999. They too changed their advocates from Kapila & Co. Advocates (for 26 defendants) to M/s Karago SN & Co. Advocates.

11. In their defence the defendants claim they were never the registered owner of the land exchanged. That they were on the land and after staying there for 7 years they in effect have since stayed on for a period of 12 years. In their counter-claim they sought adverse possession.

12. His Excellency D. Arap Moi came to the land and issued title deed to all 363 members. The 26 accepted the title deeds of 5 acres each but remained on the former land. They therefore held title and at the same time were in possession of the original land. It appears that they wanted both and resisted leaving the land.

13. In retaliation the plaintiff refused to release the further Ksh.1.5 million compensation to them.

## II Trial

12. In 2002, this suit that had been previously filed in 1990 – (12 years previously) began its trial before Mbitio J. The said Hon. Judge was unable to proceed with this matter in 2003 when he had heard all the plaintiffs witnesses except for one.

13. Under order IXVII r 10 Civil Procedure Rules the court is permitted to proceed with the suit from where it had been left off. The said advocate for defendants was not available to court nor was there any indication why he was not before court. The hearing proceeded under order IX (b) r 3(a) Civil Procedure Rules ie being satisfied that the defendant having been served through their advocates were absent.

## II: Finding

14. Should the defendants No.8 to 26 be evicted? From the land. Namely specific performance? Of the sale agreement?. From the witness there were 41 but later 26 person who resisted to be vacated. The agreement had been entered into with the office bearers of Gaichanjiro self help farm. Are the 26 persons entitled to resist being removed from the land due to the sale agreement?

15. The conduct of the defendant is that they took the title deed for the new land. They in effect remain on the old land. This clearly shows double enrichment on their part.

16. As to issue in their counter claims that wanted to have adverse possession having been on the land 12 years, the truth is that the said land was in possession of the group for 7 years after they obtained title and or 11 years. The suit property was sold. They were given alternative land. They cannot therefore remain in the land that they have been fully compensated.

17 I hereby hold that orders of specific performance of the contract be duly entered into. The orders for adverse possession be dismissed.

## III: Miscellaneous

18 For ease of reference the officer bearers 1,4,5 have since passed away. The suit against them has abated (Pall J) (as he then was) (made those).

19. Those required to move from the land are defendant 8 – 9, 11 to 26. Defendant 10 is a trespasser.

20. I accordingly order that defendant 8 – 26 be evicted from the suit land. That they bear the costs of this suit. The counter-claim is dismissed with costs to the plaintiff be borne by defendants 8 to 26.

**Dated this 16<sup>th</sup> day of October 2007 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**