

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 2364 of 1999 (OS)

IN THE MATTER OF S.38(1) OF THE LIMITATIONS OF ACTIONS ACT CAP 22

LAWS OF KENYA

JOSEPHAT THUO GITHACHURIPLAINTIFF/APPLICANT

AND

JAMES GAITHO KIBUE1ST DEFENDANT/RESPONDENT

KIMANI KIBUE KANYUA2ND DEFENDANT/RESPONDENT

J U D G M E N T

The Applicant in this Originating Summons seeks to register a portion of land admeasuring one acre comprised of parts I and J of plot No. L.R. No. Dagoretti/Ruthimitu 263 (shall be referred as the suit land) situate in Nairobi on the basis that he has been in exclusive possession of the suit land since 1987.

The Originating Summons is supported by the affidavit of the Applicant sworn on 9th December 1999.

The Respondents appeared in person and filed their 'Defence' on 26th October 2001. Its perusal only mentions a sale by the son of the second wife of the Defendants' father. They have not denied the occupation of the Applicant.

What is the case of the Applicant is that he entered and occupied the one acre plot since 1987 and the said possession has been open. The suit land is cultivated by him and he has been paying water bills since then.

The fact of the occupation of the Applicant is not challenged or denied by the Defendants (1st Defendant having died during the pendency of the suit). They only seek proof of the sale by consent of all family members, which is not the issue before court.

The Originating Summon was directed to be heard and determined by oral evidence. On the date of hearing the 2nd Defendant did not present himself and the same was heard ex-parte. The Applicant has shown that he occupied the land since 4th February 1987.

As per the evidence tendered and record of the case, it has been proved on balance of probability that the Applicant has been in occupation of the suit land which is uninterrupted and open since February 1987. The suit was filed on 10th December 1999 after lapse of 12 years since the occupation.

Certified copy of the extract of title produced shows that the two Defendants (2nd Defendant now) all jointly registered as owners of the suit land since 26th October 1982.

The Applicant having satisfied the court of his claim of uninterrupted and open occupation of the suit land, I allow the Originating Summons as prayed.

Dated, Delivered and Signed at Nairobi this 5th day of October, 2007.

K.H. RAWAL

JUDGE