



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 263 of 2005**

**MONICA WAMBUI KAMAU ..... PLAINTIFF**

**VERSUS**

**AYUB NGUGI KIMANI .....1<sup>st</sup> DEFENDANT**

**GERARLD WANGAE ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Land and Environmental Law Division
2. Subject of main suit: Adverse Possession
  - i. Land
  - ii. LR Original Limuru Kamirithu/406
  - iii. Sub-divided to Limuru/Kamirithu 716 and Limuru/Kamirithu/717.
  - iv. Estate of late James Kamau Thiongo alias Kamau Thiongo.  
Claim ownership on Limuru/Kamirithu/ 716.
  - v. Defendant absent on date of hearing.  
Order IXb r 3 (a) Civil Procedure Rules
  - vi. Directions of Originating Summons  
taken on 20 June 2003 Ojwang J
  - vii. Trial/submissions heard.
3. Held: Plaintiffs entitled to land by way of Adverse Possession to the estate.
4. Case law – nil
5. Advocate:

P.M. Njenga for J.M. Njenga & Co. Advocates for the plaintiff- present

Virshnu for Sharma & Co. Advocates for the defendant- absent

1: Background

1. James Kamau Thiongo alias Kamau Thiongo (now deceased) entered into a sale agreement with Rahab Wambui Reuben (also deceased) to purchase portion of her land being original LR Limuru/Kamirithu/406 that consisted of 6.8 acres. The total acreage bought in 1971 was 2 acres for a total price of Ksh.5,800/- (2,900/- per acre).

2. The parties obtained land board consent. They then sub-divided the land to parcel Limuru/Kamirithu 716 – 2 acres and Limuru/Kamirithu 717 – 4.8 acres. Unfortunately before the transfers could be effected the deceased James Kamau Thiongo passed away. His widow Monicah Wambui Kamau placed a caution on 8 March 2004 on the said land.

3. The seller Rahab Wambui Reuben also passed away. The plaintiff as the representative of the deceased estate and his widow sued the representative of the seller Rahab Wambui Reuben for possession of the land.

4. The widow plaintiff has informed this court that she herself has lived on the suit land for over 12 year and is entitled to the same by way of Adverse Possession.

5. Direction for hearing this suit filed on 8 March 2005 was taken before Ojwang J on the 20 October 2005 under order XXXVI r 8a, 12 Civil Procedure:.

6. On the day called out for hearing both defendants and their advocate were absent. The trial/submissions proceeded on under order IXb r 3a Civil Procedure Rules.

I: Finding

7. From the evidence before me there existed an agreement between James Kamau and Rahab Wambui Reuben. There is a written and translated agreement from Kikuyu to English. That the intention of the parties was to transfer Limuru/Kamirithu/716 to the deceased. The sub-division is complete but both parties have nonetheless died before transfer could materialize.

8. I am satisfied that Monica Wambui Kamau is the widow and legal representative of Kamau Thiongo. I hereby allow this application and enter judgment for the plaintiff.

9. That the land parcel Limuru/Kamirithu/716 be registered in the estate of James Kamau Thiongo alias Kamau Thiongo – for distribution thereafter to his dependants on a full grant being obtained in the Family Division of the High Court.

Dated his 15<sup>th</sup> day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

P.M. Njenga for J.M. Njenga & Co. Advocates for the plaintiff- present

Virshnu for Sharma & Co. Advocates for the defendant- absent