



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

Civil Case 1222 of 1999

LAZARO KABEBE.....PLAINTIFF

VERSUS

NDENGE MAKAU.....1<sup>ST</sup> DEFENDANT

ANJELO NJAIBU MUGO.....2<sup>ND</sup> DEFENDANT

JUDGMENT

The plaintiff by way of this Originating Summons seeks orders of declaration that he has become entitled to the suit land by virtue of adverse possession of the suit land **LR NO.baragwi/thumata/429**.

The first defendant is the registered owner of the suit land. By Sale Agreement entered into on 2<sup>nd</sup> April 1973 between the 1<sup>st</sup> defendant offered to sell the suit land to the plaintiff. The plaintiff paid all the purchase price of Shs.6,000/= . The plaintiff was purchasing the suit land with his brother one Silas Njogu who later declined the offer and bowed away. The plaintiff was given vacant possession but the 1<sup>st</sup> defendant became evasive and the matter never went for land Control Board Consent Possession was taken in 1973. The plaintiff did not obtain the Land Control Consent as required under Section 6 of the Land Control Act. He constructed a home on the suit land and carried out developments. He planted 1700 bushes of coffee, 15000 bushes of tea, 100 bushes of macademia, 500 bananas, 8 ovacado, 5 mangoes and 16 guavas.

The plaintiff in his evidence told the court that he has been in occupation for the last 26 years to the filing of the suit and to date it is 33 years. The 1<sup>st</sup> defendant in his evidence told the court that he had only sold 2 acres of the suit land to the plaintiff and his brother in 1973 but due to some disagreement he refunded the whole of the purchase price to them.

In 1977 he sued the plaintiff in **Embu RMCC No. 51 of 1977** in which he sought orders to evict the plaintiff from the suit land but her later withdrew it and filed a cause before the Embu Land Tribunal being **No.5 of 1988** was also set aside by the court. On examination he admitted that in 1988 he had sold 3½ acres to the 2<sup>nd</sup> defendant and they appeared before the Land Control Board which gave its consent for subdivision and transfer.

The 2<sup>nd</sup> defendant ANJERO NJAIBU in his evidence told the court that by Sale Agreement dated 16<sup>th</sup> March 1977 the 1<sup>st</sup> defendant had sold him 3 acres out of land title **NO. BARAGWI/THUMAITA/429** at Shs.4000/= per acre. He paid the whole of the purchase price and they went before the Land Control Board and consent was obtained for subdivision and transfer. But when he went to the suit land he found the plaintiff in occupation. The plaintiff who had planted coffee on the suit land became hostile and could not allow him take possession of the piece he had purchased. He purchased the 3 acres in 1977 and was registered as the proprietor of the same in 1987. It took long because there was a case in court **HCC NO.963 OF 1977** which was later dismissed.

In order to prove that the plaintiff is entitled to the suit land by adverse possession, he must prove that he has been in occupation and possession for the suit land for a period of over 12 years, continuous and uninterrupted by the defendants.

The defendant has proved that there was interruption in 1977 which was only 4 years after the plaintiff had taken possession. There was another interruption in 1987 when the 2<sup>nd</sup> defendant purchase 3 acres out of the suit land. He appeared before the Land Control Board and consent was granted for submission and transfer. The land was subdivided and the 1<sup>st</sup> defendant transferred 3 acres he had purchased to him. This was about 9 years after the first interruption. He applied and got registered as proprietor of the 3 acres he had purchased.

The Sale of the suit land to the plaintiff became null and void due to failure to obtain the Land Control Consent as required by the Land Control Act. But he had taken possession and could claim the suit land by virtue of adverse possession. But since there was interruption in 1977 and 1987 in respect of the 3 acres which were later transferred to the 2<sup>nd</sup> defendant he cannot claim title by virtue of adverse possession as far as the 3 acres were concerned. The title to the 3 acres was legally passed to the send defendant who lawfully purchase the same and managed to obtain consent for subdivision and transfer. But for the remaining 2.5 acres which have been in possession of the plaintiff for the last 26 years continuous and uninterrupted he has proved that he is entitled to the same by virtue of adverse possession.

Accordingly I enter judgment as follows:

The plaintiff is entitled to 2.5 acres by virtue of adverse possession and the 2<sup>nd</sup> defendant is entitled to 3 acres which he purchased and were registered in his name. Each party bears own costs.

Dated and delivered at Nairobi this 27<sup>th</sup> day of February 2006.

**J.L.A. OSIEMO**

**JUDGE**