



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Suit 62 of 2004 (OS)

PRESBYTERIAN FOUNDATION P.C.E.A. NAKURU WEST).....PLAINTIFF

VERSUS

PAUL FRANCIS GICHOHI.....DEFENDANT

J U D G M E N T

The Presbyterian Foundation (P.C.E.A., Nakuru West) took out the Originating Summons filed under Order XXXVI Rule 3D of the Civil Procedure Rules against the Defendant one Paul Francis Gichohi. The Plaintiffs have sought for two principal prayers to wit:-

- a) That the Plaintiff herein be declared to have been entitled to all that parcel of land known as NAKURU/MUNICIPALITY BLOCK 3/362 (Original LR NO.8832/765 comprising of 0.0297 H.A. Approximately by virtue of the Plaintiff's adverse possession of the whole of the parcel for over twelve (12) years.**
- b) Secondly, the Land Registrar, Nakuru do register the Plaintiff as the proprietor (Lessee of the parcel NAKURU MUNICIPALITY BLOCK 3/363 (Original No. 8830/765).**

The application is supported by the grounds stipulated on the body of the same and expounded further in the supporting affidavit of SIMON NDERITU KANAI a Church elder of the Plaintiff Church and the Chairman of the Property Committee.

In addition to the Supporting Affidavit, the Deponent also gave oral evidence during the hearing and produced the following documents among others:-

- a) A certified copy of the Extract of Title for NAKURU/MUN/BLOCK 3 NO.363.**
- b) Letters by the Municipal Council dated 8/4/81 and 8/2/83 requesting the Defendant to surrender the Title to this plot. She was allocated an alternative plot by the Commissioner of Lands.**
- c) A letter from the Defendant requesting the Church to refund him Kshs.6,000/- which he incurred in processing the Title for the Plot he was allocated in exchange of the suit premises.**

According to the Plaintiff's witness Simeon Nderitu Kanai, in 1981, the then President of the Republic of Kenya visited their Church and directed that all the (21) twenty one plots adjacent to the Plaintiff's Church be given to the Church and all the owners be compensated with alternative land.

The Plot in question was one such plot which the Church took possession of in 1981. They fenced the entire plot and carried out extensive development since 1981. The owners of the plots, the Defendant included were well compensated with alternative land belonging to the Nakuru Municipal Council in collaboration with the Commissioner of Lands. A letter from the Defendant dated 17th March, 1987 addressed to the Moderator of Nakuru Kirksesscon confirms that he got a Title in place of parcel No.8836/765. However, despite having been compensated, the Defendant has failed/neglected to surrender the Original Title to the Commissioner of Lands or to the Nakuru Municipal Council to enable them issue title to the Plaintiffs. All the efforts to get the Defendant comply with the requirement for surrender did not yield any results and thus the Plaintiff filed this suit claiming for adverse possession as they have been in peaceful and uninterrupted possession for more than 12 years. The Defendant did not attend court despite having been served even through the advertisement in the local print media.

I have carefully considered all the material that was placed before me, the plaintiff's evidence and the supporting affidavit. I am satisfied that the plaintiffs have been able to prove their case to the required standard.

There being no evidence to controvert the Plaintiff's evidence, I am satisfied that the prayers sought should be granted.

Accordingly I hereby declare that the Plaintiff is entitled to the parcel of land known as NAKURU MUNICIPALITY/BLOCK 3/363 (Original LR 8836/765) comprising of approximately 0.0297 H.A. by virtue of Adverse Possession.

I also order that the Land Registrar do register the Plaintiff as the Proprietor/Lessee of the above parcel.

It is so ordered.

Judgment read and Signed on 10/2/06.

MARTHA KOOME

JUDGE

10TH FEBRUARY, 2006