

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Civil Suit 50 of 2006 (OS)

CHEBALUNGU KONGASIS TRADING CO.....PLAINTIFF

AND

LIVINGSTONE MILGO.....DEFENDANT

JUDGMENT

On the 20th of May 1981, the plaintiff herein Chebalungu Kongasis Trading Company obtained judgment against the defendant Livingstone Milgo in a suit filed before the then Resident Magistrate's Court at Kericho *i.e.* **Kericho RMCCC. No.143 of 1980.** The said judgment was entered by consent on the following terms;

*The plaintiff was declared to be the owner of all that parcel of land known as **L.R NO.7388/183** situate at **Sotik Township**. The court further ordered that the title in respect of the said parcel of land be rectified by canceling the entries made therein reflecting at the defendant was the owner of the suit land and in its place be substituted the name of the plaintiff.*

It is apparent that the plaintiff took no action to execute the said judgment. The plaintiff did not make any effort to have itself registered as the owner of the said suit land. In accordance with **Section 4(4) of the Limitation of Actions Act (Cap.22 of the Laws of Kenya)**, a successful party may not execute on a judgment after the expiry of twelve years. It is pursuant to this limitation that the plaintiff brought this originating motion before this court to have this court adopt the judgment which was entered in its favour by the Resident Magistrate, Kericho in 1981 and issue a **Vesting Order** thereto. The plaintiff did not indicate under which section of the law it was filing the said originating motion. Having perused **Order XXXVI rule 1(f) of the Civil Procedure Rules**, I suppose the plaintiff wanted this court to endorse the compromise of the said suit between itself and the defendant.

The defendant was duly served with the originating motion. He acknowledged receipt of the summons. An affidavit of service has been filed indicating that the defendant was duly served. By the time of the hearing of this suit, the defendant had not entered appearance nor filed any pleadings in opposition of the originating motion. The originating motion was therefore unopposed. From the proceedings before the Resident Magistrate's Court, Kericho in 1981 in the suit mentioned hereinabove, it is clear that the respondent did not challenge the suit filed by the plaintiff. In fact he entered into a consent order with the plaintiff to have the suit filed against him by the plaintiff allowed with no orders as to costs. I will therefore allow the suit filed by the plaintiff herein. I hereby issue a vesting order declaring that all that parcel of land known as **L.R No.7388/133** situate within **Sotik Township** and which had been declared to belong to the plaintiff pursuant to the consent judgment and decree of the **Resident Magistrate in Civil Case No.143 of 1980.**

Since the defendant did not enter appearance or file any pleadings in opposition to this originating summons, there shall be no orders as to costs.

DATED at KERICHO this 2nd day of November 2006

L. KIMARU

JUDGE