

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 2167 of 1999

BENJAMIN WAWERU NGETHE.....PLAINTIFF

VERSUS

HUMPREY IRAYA KAMIANO.....DEFENDANT

JUDGMENT

The plaintiff is the registered proprietor of suit land *L.R. NO.MUGUGA/MUGUGA/T.442*. The defendant is residing and utilizing the land without his consent. On 9th October 1998 he served the defendant with a notice to vacate the suit land so that he could utilize and develop it but the defendant refused to vacate.

He filed this suit against the defendant seeking an order of eviction, mesne profits from the date of filing this suit 12th November 1999 till vacant possession is given and costs of the suit.

The plaintiff in his evidence told the court that the suit land is registered in his name and he produced Title (P-Ex 1). He had purchased the suit land from one Esther Wanjiru Gachaga on 28th June 1996 but he did not produce the original Sale Agreement. He further told the court that when he bought the suit land the defendant was residing there in a small house thatched with grass. On cross examination he admitted that he had reported the defendant to the police and he was arrested and charged with trespass on private land but was acquitted.

The defendant in his evidence told the court that he had entered the suit land and taken possession in 1955 and he has lived there since then. The suit land is public land belonging to Kikuyu Town Council and he is living there by its consent. He has lived there peacefully until 25th September 1998 when the plaintiff came there and erected a fence round the land but was chased away by villagers who destroyed that fence he erected. The plaintiff went and reported him to the police and he was arrested and charged with trespass on private land at Kiambu Court being *NO.2577 OF 1998* but was acquitted.

The defendant further told the court that he had reported the matter to the Town Clerk – Kiambu Town Council who informed him that the allocation of the suit land to a private developer was illegal and had been revoked. He was issued with certified copy of the minutes of the council which sat on 2nd June 1999 which indicates that the allocation of the suit land had been revoked. He produced the minutes as D-Ex I. The plaintiff did not challenge this document.

After having considered the evidence by both the plaintiff and the defendant it is clear that the suit land belonged to Kikuyu Town Council before it was allegedly allocated to the plaintiff. But there is evidence that the allocation was later revoked. That being the position and the plaintiff having lost registrable interest over the suit land, his claim for eviction is not tenable. Although the defendant has been on the suit land for over 55 years, his possession is with the consent of the Local Authority so that he cannot claim to have become entitled to the suit land through adverse possession.

As I had stated earlier the plaintiff has no claim over the suit land and this suit is therefore dismissed with costs to the defendant.

Delivered and dated at Nairobi this 18th day of October 2005.

J.L.A. OSIEMO

JUDGE