



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

**AT NAIROBI**

**CIVIL CASE NO.1654 OF 1994**

**MUCHUNU MUMBURA.....PLAINTIFF**

**VERSUS**

**PETER KAMAU CHEGE..... DEFENDANT**

**RULING**

The Plaintiff moved the court by way of a chamber summons dated 4th November, 2003. By the said application, the plaintiff sought 2 substantive orders:

- (i) a vesting order in respect of the suit property, in favour of the plaintiff
- (ii) a direction to the Land Registrar, Kiambu District Land Registry, to register the vesting order.

This application is intended to give effect to the judgment which this court granted on 17/5/95, declaring that the plaintiff had become entitled to be registered as the owner of the suit property, by virtue of adverse possession.

Following the judgment, the Plaintiff extracted a Decree. However, the said Decree has apparently not yet been executed. The applicant has stated in his supporting affidavit that the Land Registrar requires a vesting order, to enable him effect registration of the applicant as the owner of the suit property.

The application cites the provisions of Order XXXVI rule 12 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, as the foundation for the prayers sought. During his submissions, Mr. Githuka advocate, informed the court that no appeal had been preferred against the judgment which was granted herein on 17/5/95. For those reasons, the applicant submitted that a grant of the vesting order would be the next logical step in the process of giving effect to the Judgment.

The application was vehemently opposed by the respondent. The first line of attack was directed at the procedure utilised by the applicant. It was pointed out, correctly, that Order XXXVI rule 12 does not provide any authority to this court to grant a vesting order. The provisions of Order XXXVI rule 12 stipulate as follows:

“Every application in a suit which has been commenced by originating summons shall be made by summons in chambers”

Clearly, that rule merely spells out the procedure to be utilised. It says nothing about a vesting order. I therefore accept the respondent’s contention that the applicant has failed to demonstrate that the

provisions cited by him would in any way justify the grant of a vesting order.

The respondent also illustrated to the court that he had filed a Notice of Appeal on 22/5/95 i.e. within 7 days from the date of judgment. Shortly after the Notice of Appeal was filed, the “intended appellant” died. Thereafter the respondent undertook steps to substitute the deceased with the administrators of his estate. The application for substitution of the deceased was in court as recently as 7/11/03, when it was adjourned before Okubasu J.A.

At that point of the submissions, matters became somewhat blurred. The applicant blames the respondent for the adjournment of the case, whereas the respondent puts the blame squarely at the applicant’s door. However, it is patently clear that the respondent did initiate steps towards the filing of an appeal against the Judgment dated 17/5/95. It is also clear that the intended appeal has not yet been lodged in the Court of Appeal.

The reasons for the prolonged delay in the filing of the Appeal are not clear. But does the absence of an appeal render invalid the respondent’s opposition to the application? Not necessarily. Although I must hasten to say that the long delay before the appeal has been filed, would probably make it difficult for the respondent to lodge his intended appeal. However, that is not a matter that I need to take into account in this application.

The mere fact that the Land Registrar may have declined to register the applicant as the owner of the suit premises is not reason enough to warrant the grant of the vesting order.

The court would only be able to grant such orders as may be demonstrated by the applicant to derive authority from the provisions of the law. And in this case, the applicant has failed to illustrate to the court the basis upon which the orders sought are founded. I am therefore constrained to dismiss this application with costs. It is so ordered.

Dated at Nairobi this 23rd day of February, 2004.

FRED A. OCHIENG

Ag. JUDGE