



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 1240 OF 2001

RAVJI KARSANI SANHANI.....PLAINTIFF

V E R S U S

PETER GAKUNU.....DEFENDANT

R U L I N G

The Plaintiff has filed this originating summons to declare him to have become entitled by adverse possession of over twelve years to **all that** piece of land bearing L.R. 209/11091. That piece of land is registered under the Registration of Titles Act. **(Cap. 281) (referred to as the suitland).**

Pending hearing and determination of his suit, the Plaintiff seeks to restrain Defendant from evicting, demolishing any structures erected thereon, transferring or in any way disposing the suit land. According to the Plaintiff he has been in occupation of the suit land since 1979 and has enumerated the development made thereon by him in paragraph 2 of his affidavit sworn on 25th July, 2001. The families of ten of his staff members are living on the suit land. The Defendant was issued a title deed on 16th January, 1990 which has granted him the lease to hold the suit property for 99 years with effect from first May, 1986.

I need not go much into the factual position of the application before me. It may be sufficient to state few facts that there is no serious denial of the facts stated by the plaintiff except to say that he has not occupied all the suit land and that the Defendant has since May, 2000 contacted the Plaintiff to move out of the suit premises and that he has given impression to the Defendant that in due course he would move out and then he sent notice on 28th June, 2001 through the District Officer when the plaintiff did not move out.

Only legal issue which may effect the factual position herein is the date on which the Defendant became the proprietor of the suit land. I must note here that I am not required to decide on this issue finally. According to the Plaintiff the period starts from 1st May, 1986 as stated in the letter of allotment and also shown in the title issued. The Defendant argues that it started from 16th January, 1990 when the title was issued.

Mr. Gaturu the learned counsel for the Defendant relied on authorities of Dr. Joseph N.K. Arap Ng'ok –vs- Justice Moiyo Ole Keiwua & 4 others Court of Appeal (Nairobi) 60/97 (unreported), Wreck Motor enterprises –vs- The Commissioner of Land & 3 Others Civil appeal 71 of 1997 **(Unreported)** and Mulinyi Hannish Ali –vs- The Attorney General & Another. Civil Appeal No.125/92 (Unreported). Without much ado I can state that these cases cannot be conclusively relied by the Defendant, when it is observed in those cases that the title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated therein and actual issuance thereafter of the title document.

It is clear that the said issue, which shall finally determine the diverse claims of the parties, is a contentious one and can only be decided after the full trial.

At this stage, I am to satisfy myself whether the Plaintiff has demonstrated before me that he is entitled to the interim prayers he is seeking as per the principles laid down in famous case of Geila -vs- Cassman Brothers & Company Ltd. [1973] E.A. 358.

The Plaintiff has prima facie shown that he is in occupation of the suit land since 1979 and that he cannot be at this stage stamped as a squatter on the suit land. The Defendant has threatened to evict him with the force of administration behind him.

Even if I do not find that the plaintiff has a prima facie case with probability of success, which I may think the Plaintiff has demonstrated, it shall be appropriate to determine this application on balance of convenience.

The Plaintiff is in occupation of the suit land and has shown the development made by him thereon. As against that the Defendant even though issued the title in the year 1990 (I may also note that he was given letter of allotment on 23rd April, 1986, has only woken up in the year 2000 to claim his right under the title deed. As earlier observed whether the Defendant became the proprietor from the date of commencement of the lease period or from the date of the title deed is a contention which has to be determined after the full trial. These facts, are in my humble view, enough to find that the balance of convenience is in favour of the Plaintiff.

As a result of the above I allow the application dated 25th May, 2001 in terms of prayer 2 of the application thereof. The costs of this application shall be in the cause.

Dated and delivered at Nairobi this 10th day of April, 2002.

K.H. RAWAL

JUDGED