

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 411 OF 1999

PETER MUTUNGA GACHIGI PLAINTIFF

VERSUS

SERA NJERI MUIGAI DEFENDANT

RULING

The defendant filed application dated 28.8.2001 seeking orders to strike out the suit as showing no cause of action and also that it is barred by statute of Limitations of Actions Act section 4 and 7. The plaintiff has pleaded in an amended plaint that he entered into a contract to purchase land with one John Muigai Muobi now deceased . The plaintiff paid purchase price and was given possession of the identified plot which he purchased. I would say that for that contract everything was done to complete deal contract by August 1989 when the plaintiff registered a caveat against title to protect his interest. The only item that was left outstanding is the issue of registration of his interest in the lands office in compliance with the relevant statutes. The property had already passed from the vendor to the purchaser. The issue of subdivision was a formality to facilitate the registration requirements. Before these formalities were complied with the vendor the said John Muigai Muobi, died. This fact was discovered by the plaintiff sometime in 1999. He discovered that the defendant Serah Njeri Muigai the widow of the vendor was now registered as owner of the plot which had been sold to him. This suit was therefore filed alleging that the caveat which was registered by the plaintiff was irregularly removed without any notice to him as is required by law and also that his plot was now registered as subdivision 2949/VI/MN registered in the name of the defendant by dishonest means. The plaintiff claims that he be registered as owner of the plot No. 2949/VI/MN. The plaintiff further in the alternative claims for refund of his purchase price and damages. After making above observations it is clear that evidence is required to show exactly when limitation of time began to run. The land is now registered in the name of defendant since 1999 and it is alleged dishonestly.

In the circumstances I find that this is not a matter that can be resolved by affidavits but by evidence at a full trial. I have already said in my view that contract between plaintiff and deceased was already completed by payment of price and giving of possession. It would be necessary for the defendant to explain how she got herself registered as proprietor of the plaintiff's plot which was protected by a caveat.

For the above reasons I decline to find that the suit shows no cause of action or at this stage that it is barred under statute of Limitations Act. The application is therefore dismissed with costs.

Dated 24th day of June 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

In presence of Mr. Kimani only.

Mr. Kimani: -

Applies for proceedings and certified copies of the Ruling. Also I apply for leave to file appeal.

Court: -

Leave granted. Copies to be supplied upon payment of copying charges.

J. KHAMINWA

COMMISSIONER OF ASSIZE