

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL CASE 665 OF 1988

LIVINGSTONE KIBUE METHI PLAINTIFF

VERSUS

JOHN GAKUHI MUTU & OTHERS DEFENDANTS

J U D G M E N T

The Plaintiff seeks an order that he has acquired a title to Kiganjo/handege/T.57 (to the suit premises) by reason of his having been in adverse possession of the suit premises for a period of not less than 12 years prior to the filing of the application and that an order he made directing the Registrar of Title to registrar a title to the suit premises in the Plaintiff's name. The Plaintiff appeared in person and gave evidence that he had been in possession of the suit premises since 11th February, 1963. He said he bought the land from the 10th Defendant for 6000/- and gave the agreement to his lawyer who closed his office so that the Plaintiff was unable to retrieve the agreement. He stated that no Land Control Board consent was obtained and therefore the land was not transferred to him. He went on to say that the 1st Defendant went away for 15 years and on his return he sold the suit premises to the 2nd Defendant. The Plaintiff also brought two other pieces of land known as respectively as Kiganjo/Handege/T55 and T56. T 56 he bought from another owner and the Plaintiff has title to this piece of land. In each case he paid Shs.600 for these pieces of land.

He does not have a title to T.55, which also belonged to, the 1st Defendant but he is in occupation of it. He in fact is in occupation of all three plots, which are contiguous and are of a quarter of an acre each in size. In cross-examination he said the 2nd Defendant came to interfere with him to get possession. Subsequently the 3rd Defendant brought the suit premises from the 2nd Defendant to whom the 1st Defendant had sold it. The 3rd Defendant also interfered with the Plaintiff and tried to get possession. The Plaintiff was shown a copy of letter dated the 27th August 1998 addressed to him by the 3rd Defendant and copied to various people including the Assistant Chief Handege Location. The Plaintiff denied having seen the letter which required him to remove his property from the suit premises within 21 days failure which, legal steps would be taken against him. The Plaintiff admitted having written letter dated 3rd march 1975 which referred to the suit premises but from which nothing relevant arises.

The 1st Defendant did not attend to defend the suit but the 2nd Defendant gave evidence, that he bought the suit premises for Shs.16,000/= in 1978. He used the title deed to obtain a loan from a Bank, which was his only interest on the suit premises, as he came from a different area. He states he went to visit the suit premises but there was no one on the land, and that up to date no one is occupying it. He then sold the land to the 3rd Defendant. The 3rd Defendant said he purchased the suit premises in 1998 for Shs.20,000/= He said he decided to move on to the land but could not do so as the Plaintiff started growing subsistence crops. He went to the chief who advised him to write a letter (Exh.1). They visited the chief who told the Plaintiff to leave. Instead of leaving he filed his case. He admitted the Plaintiff was still in occupation. In cross-examination the 3rd Defendant said he visited the plot but did not find the Plaintiff there. There were however some mango trees growing on the plot as well as others. In answer to a question from me the 3rd Defendant said there were buildings on T.55 and T.58 but not on T.57.

I find that the Plaintiff entered on to the suit premises in 1963 initially by virtue of an agreement to purchase. No Land Approval was obtained and as a result the agreement became null and void by virtue of the provisions of the Land Control Act. This would have been six months after the date of the Agreement, which the Plaintiff said, was the 11/1963. Therefore after the 11/8/1963 the Plaintiff had no lawful right to remain on the Land and had he so wished the 1st Defendant could have obtained an order for possession against the Plaintiff. The Plaintiff was therefore in adverse possession of the suit premises from this date. I found the Plaintiff to be a truthful witness wherein I do not believe the 2nd Defendant when he

stated that there was no one on the land when he visited it. The 3rd Defendant did visit the suit premises and sought to remove the Plaintiff by the Notice of the 27/8/1988, but the Plaintiff refused to go and filed this suit.

There is no doubt that the 1st Defendant knew that not only was the Plaintiff in possession of the suit premises but also that he had already been paid by the Plaintiff for the suit premises at what was the market rate at that time. Therefore acted dishonestly in selling the suit premises to the 2nd Defendant. I am satisfied that the 2nd Defendant knew of the Plaintiff occupation of the suit premises but his only interest on the suit premises was to use it for security for a loan which he paid off when he sold the same to the 3rd Defendant. I am also satisfied that the 3rd Defendant was also aware that the Plaintiff was in occupation of the suit premises before he bought it and so having been put on notice of these facts he acted at his own peril in getting the title transferred to himself before being satisfied that the Plaintiff had no right to the suit premises.

In the result I find that the Plaintiff was in adverse possession of the suit premises from the 11th August, 1963, until the filing of this application a period in excess of the limitation period of twelve years and as such that he is entitled to a title to the suit premises by way of adverse possession.

I order that the Registrar of Title to register the Plaintiff as the registered owner of the suit premises and issue him with the relevant title documents. The costs of this suit will be made by the 1st Defendant in respect of the Plaintiff and 2nd and 3rd Defendant.

Dated and delivered at Nairobi this 24th day of October, 2001

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE