



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.1607 OF 1983**

**MARY NDATI ..... PLAINTIFF**

**VERSUS**

**MWANGI KANYIRI & ANOTHER ..... DEFENDANT**

**J U D G M E N T**

By an originating summons of the 31st May 1983 the Plaintiff seeks an order that she be entitled to that piece or Parcel of land known as Land Parcel NO.4/ Muruka/579 by virtue of having been in adverse possession thereof for a period of over 12 years.

The Plaintiff, is the widow of John Mburu Kabinya and his administrator by virtue of Letters of Administration having been granted to her. She brings this suit in her own name. She and her late husband took possession of the suit premises in 1969. Initially her husband and she entered into the land by virtue of a written agreement dated the 10th March, 1969 whereby the then registered owner Nwangi Kanjiri agreed to sell the suit premises to her husband. This agreement provided for the balance of a sum of Shs.5000/= to be paid by the 30/6/1969. This agreement is not stamped and is not therefore admissible in evidence. However the agreement which was for the purchase of what is admitted is agricultural land required Land Control approval to make it valid. As no such consent was obtained it therefore became null and void after a period of three months from the date thereof namely the 10/6/1969. Thereafter the Plaintiff and husband stayed in possession of the suit premises until her husband was killed in a road accident in 1978. Thereafter the Plaintiff remained alone in the suit premises where she still lives today cultivating the land having put coffee trees on it in 1979, but has not built a house on the suit premises. The 1st Defendant gave to the Plaintiff's husband the original title deed to the suit premises, which is dated the 20th March, 1969 and shows that the 1st Defendant is the registered proprietor of the suit premises. When the Plaintiff discovered in 1983 that the 2nd defendant had purchased the suit premises. She filed these proceedings.

The second Defendant gave evidence that in 1969 he brought the suit premises from the 1st Defendant. At that time it belonged to Karuru Ndungu although the 1st Defendant had possession. The 1st Defendant did not transfer the suit premises to the 2nd Defendant and in 1981 told the 2nd Defendant he could not sell the suit premises for Shs.1000/= the original price but would sell it for Shs.30,000 which the 2nd Defendant did not agree and offered Shs.25000/= which the 1st Defendant accepted. The 1st Defendant later refused to sell the land so the 2nd Defendant applied to court and obtained an ex parte order transferring the suit premises into his name. The order is dated the 22nd October, 1982. As a result the Deputy Registrar executed a transfer, which was, registered leading to another title deed being issued dated the 16th February, 1983 showing that the 2nd Defendant was the registered owner.

The 2nd Defendant stated that the 1st Defendant's wife was cultivating the land and did so until 1983 when she moved to Thika. He said he only came to know the Plaintiff when she served the proceedings on him but that she was now in possession of the suit premises. In cross-examination he said he had visited the suit premises between 1969 and 1982 and saw the wife of the 1st Defendant there. He had never seen the Plaintiff cultivating the suit premises.

Having heard the evidence I am satisfied that the Plaintiff has been in occupation and has had the exclusive use of the suit premises from 1969 until today. I do not believe the 2nd Defendant when he says that the 1st Defendant's wife was in possession of the suit premises up to 1983. I am of the view that the court order obtained by the 2nd Defendant was obtained in collusion with the 1st Defendant who clearly had acted dishonestly in selling the suit premises to the Plaintiff and then to the 2nd Defendant. I believe that the 2nd Defendant knew at all times that the Plaintiff and initially the Plaintiff and her husband were

in possession of the suit premises. He made no explanation as to why he took no steps to obtain possession when the suit premises were registered in his name in February, 1983. Even until today he has not sought an order for possession. Although the possession of the suit premises was originally in pursuance of the Agreement between the Plaintiff's husband with the 1st Defendant when the agreement become void in June, 1969 the Plaintiff and her husband remained in possession with no legal right and had he so wished the 1st Defendant could have got an order for possession against them. I hold therefore that the Plaintiff together with her husband originally had been in adverse possession of the suit premises from June, 1969 until the 31st May, 1983 when this suit was filed a period of approximately 14 years.

In the result I make the orders asked for insaprayers (a) and (b) of the originating summons. The Plaintiff will have the costs of this suit.

**Dated and Delivered at Nairobi this 12th day of October, 2001**

**PHILIP J. RANSLEY**

**COMMISSIONER OF ASSIZE**