



Land
Vacant possession counter claim
vacant possession

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

**AT NAIROBI
CIVIL CASE NO. 1902 OF 1993**

GEOFFREY KAMANGUPLAINTIFF

VERSUS

MARY NJERI KAMANU DEFENDANT

JUDGEMENT

Both the parties in this land dispute are related. Geoffrey Kamunyu, the plaintiff is the brother in law to Mary Njeri Kamau the defendant.

Geoffrey gave evidence and said that he bought the disputed land reference Muguga/Gitaru/2.55 way back in 1961. As he never went to school or obtained much education, his brothers did.

He constructed a house on the said land. He then permitted his brother Kamau to live there with his wife Mary Njeri, the defendant in this case. The couple continued to live on the land from as earlier as 1963 until 1973. That year the brothers got together in their ancestral home and divided the ancestral home land. As Kamau was the eldest, by customary law he would obtain a larger share than the rest.

The said family were in two houses. Namely, their father had two wives. The land was therefore divided equally between the two houses.

The portion of the plaintiffs family was 6.5 acres.

1.5 acres went to Kamau. The remainder 5 acres was divided into 2.5 each.

As the plaintiff was the last born and not yet married, the land of 0.20 was given to him by the 1st house and 0.20 by the second house making a total of 0.40 acres.

According to the further evidence before the court, Kamau had opted out to sell his one acre in order to buy land elsewhere. He then was left with 0.5 acres. With this portion of land he decided to give to the plaintiff. The reasons being that they had bought an 8 acre piece of land elsewhere together. The plaintiff had contributed Ksh.2000/-. Kamau changed his mind and decided that he did not wish the plaintiff to join him there. He therefore said that instead of refunding the said Ksh.2000/- he would surrender the remaining ancestral land of 0.5 acres that belonged to him.

This was known to the elders and relatives of Kamau. They came as the plaintiffs witness and each narrated this fact. Each confirmed that the land belonged to the plaintiff. Their views were that the defendant - Mary Njeri must vacate the suit premises and leave it to the plaintiff.

In 1971 before the ancestral land was divided Kamau had been given the title and a power of Attorney from the plaintiff to take a loan from the agriculture Finance Company of Kenya totalling Ksh.8,000/- (see the abstract of title).

It was through this loan, the witnesses said that was able to buy some more land, raise livestock on the land and develop the homestead. The plaintiff had been reluctant to give a power of attorney but did so in any event at the instructions of some of the witnesses.

In 1878, Kamau died in a tragic road accident. He was buried peacefully. The following day the family visited the defendant to pay them respect in her house.

None mentioned that the house and land never belonged to her. She took over the responsibility of the house. She began to continue to repay the loan back. This she did and completed the said repayment in 1982.

In 1986 she called the plaintiff to discuss the property. When she was asked for the title she refused.

The plaintiff took her to the DO, the Chief, to the civil courts where she was charged. She was requested to return the title deed to the plaintiff which she did.

She remained on the land and resided in the house with her children. In 1993, the plaintiff filed the present suit against her for an eviction and mense profits.

The defendant was able to state in court that she understood that the house belonged to her husband. It was her husband who built it. She infact visited the site when she was still his fiancee' and witnessed he construction in the early 60's. She called DW2 a builder who stated all the money he got was from kamau and not the plaintiff.

The defendant further stated that her husband had exchanged the plot T55 with 0.95 avers of the ancestral land with the plaintiff. She admitted that the plot T55 was not ancestral land.

She also admitted that she was not involved when the 1973 meeting was held for the decision fo the ancestral land.

She nonetheless used logics and stated how could a person extensively develop a property if it did not belong to them?

The witnesses for the plaintiff had stated that Kamau's intention was to move from the said property. He had bought building materials a portion was used for his grave.

I would find from the evidence before court the following from the agreed issues for determination.

The plaintiff claimed he permitted the defendants deceased husband to settle on the suit premises. His witnesses said that he was requested to move but said that he was not yet ready to move and build his

house elsewhere.

The defendant denied this. She in fact wondered why no one told her of this until she had repaid the loan on the said land.

The fact established from the certified copy of the green land that the land was bought by the plaintiff. It is registered in his name.

The evidence further disclosed that the plaintiff permitted the deceased husband to change the land. On full repayment of loan the land title was returned to the defendant.

The defendant claimed that the land was registered in the name of the plaintiff - but this was exchanged with other ancestral land. She implied that he held it in trust for her.

The plaintiff categorically denied this. The evidence showed that he had the 1980's requested her to leave the premises.

I have also established that the power of attorney is not a disputed matter in this suit.

No proceeding of the Kikuyu civil case law No. 652 of 1987 was produced. I am therefore unable to say if it is relevant to this suit.

The defendant has occupied the suit premises since 1963 to date.

From 1963 to 1978 she lived peacefully with her husband till his tragic death. From 1978 to 1982 she diligently repaid her loan and lived peacefully.

In the 11 years between 1982 to 1993 she has been having problems with the plaintiffs.

The question rises as to why she was not in fact approached about the land when the deceased died. In fact until the loan was repaid, from 1978 to 1982 - 4 years she lived without any of the men discussing much with her.

I find that a later attempt to have discussion was made but this was after she wished to ascertain her rights over the land.

I hold that the defendant should succeed in her counter claim for adverse possession. That she had lived in the land on quiet possession since 1963. More so after her husband died.

Mr. Njoroge is of the opinion that the time was 11 years and not 12 years of adverse possession.

I cannot see a person building and living in her home for many years, bringing up her children and then informed that the home she has developed all of her children's life should be taken away from her because it belongs to another.

I would enter judgement for the plaintiff under adverse possession. In the alternative that the land was held in trust for her.

I would dismiss the plaintiff suit with costs.

Dated this 30th day of June, 2000 at Nairobi.

M.A. ANG'AWA
JUDGE