



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1374 OF 1995

NJUGUNA MUTHINJI PLAINTIFF

VERSUS

MUHORO KAMUNYU DEFENDANT

JUDGEMENT

The plaintiff/applicant filed this originating summons on the 4.5.95 seeking for orders (questions) as to whether he may claim through adverse possession. That he be registered as the proprietor of all the land known as Location 10/Gatheru/97.

The defendant/respondent in reply stated that the occupation of the land had not been in adverse to his said title.

At the trial, the parties who had earlier agreed during directions before Hon. Justice Mbiti on 16.9.96 that the evidence by way of viva voce would be taken, agreed on the following questions to be determined:-

“Whether the purchases occupation since 1974 has been open, quite peaceful and uninterrupted. Whether the respondents title to the suit land has been extinguished through the doctrine of adverse possession. Whether the applicant should be registered as proprietor of the suit land in place of the respondent.”

A brief background of this case is as follows. The applicant entered into an agreement with the respondent in 1971 to purchase the respondents piece of land for Ksh.1,200/-. This was later agreed to Ksh.1,600/-. The applicant bought the land by paying in instalments. He completed the transaction in 1974. The respondent failed to appear before the land control board to effect transfer.

According to the applicant he has been in quite possession of the land until the respondent came to ask he refunds him, the applicant, his money. The applicant had since refused to do so.

It transpired through the evidence by the respondent and on record that the applicant and respondent had taken their disputes to the chiefs district officer and the various as administrators. They were referred to the court of law. It was then that the applicant filed a suit in the subordinate courts. It was struck out as having been filed out of time and 13 years after the course of action.

The applicant did not give up. He filed this suit in this court for adverse possession and claimed title to the land.

The respondents states that the original agreement was in fact including the fact that he may refund the

money if he changes his mind as to the sale agreement. The amount ought to be double the amount - namely Ksh.3,200/-.

His witness and son stated that in 1978 (4 years after the completion of the agreement) his father had attempted to refund the money in his presence. He stated that the money was a loan from the applicant in exchange of the use of land. This fact was never mentioned or disclosed by the applicant nor the respondent.

In his submissions the advocate for the defendant tried to state that there has been vigorous interruption all along. If we say in 1974 that the occupation began then the interruption was caused from 1978 or the 1980. He prayed that the best should be the applicant be refunded his dues.

The advocate for the plaintiff/applicant stated that there has been a full 12 years where the applicant had lived on the land uninterrupted. The interruption first came in 1993. Prior to that there has been a peaceful occupation.

The advocate for the plaintiff relied on the case law of Benjamin K. Murima & Others V. Gladys Nyeri CA 213/96.

And the case law of the Public Trustee & Mrs. Beatrice Muthoni Vs Kamau Wandimi 1982-88 IKAR 498.

The defendants relied on the case law of Kimani Ruchine and Another V Swift, Rutherford Co. Ltd & Another All these cases deal with adverse possession.

In the public trustee/Muthoni case - the court of appeal pointed out that the issue before the court was not the sale of land, but adverse possession.

I would point out this fact to this case. The main issue herein is adverse possession,.

I find that the applicant had been since 1974 to date in occupation of the land. This had been open quite and peaceful. It was interrupted. The respondent challenged this occupation sometime in the 1998's almost 20 years later. It is as a result of this that the appellant came to court.

I hereby find that the respondents change of mind was delayed inordinately. I hold that the applicant should be registered as the proprietor of the suit land in place of the respondent. Judgement is accordingly entered for the applicant/Njuguna Muthinji. I also award him costs.

Dated this 7th day of June 2000 at Nairobi.

M.A. ANG'AWA

JUDGE

Judgment read in presence of both advocates.

M.A. ANG'AWA

JUDGE

7.6.00