



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC. CASE NO. 47 OF 2019**

**EDWIN KIPKEMOI MUTAI 71 OTHERS.....PLAINTIFF**

**VERSUS**

**ALFRED OWOUR.....1<sup>ST</sup> DEFENDANT**

**YUDA AWUOR.....2<sup>ND</sup> DEFENDANT**

**LANDS REGISTRAR KISUMU COUNTY.....3<sup>RD</sup> DEFENDANT**

**SETTLEMENT OFFICER KISUMU COUNTY.....4<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiffs filed the suit herein claiming that they are the owners of plot number Kisumu/Songhor/3106 which has since been subdivided into several parcels and thereby extinguishing land parcel plot No. Kisumu/Songhor/3106 the property of settlement fund trustees. The plaintiffs allege that on or about the year 1973 the said land was transformed into a Settlement Scheme by the Government of Kenya and further sub-divided into several portions being Kisumu/Songhor/487, Kisumu/Songhor/488 and Kisumu/Songhor/490 respectively. The plaintiffs who belonged to the family of Kibinot Rongoei were at all times settled in the suit lands Plot no. Kisumu/Songhor/487 and Kisumu/Songhor/490 respectively, even prior to the sub-division aforesaid.

The Plaintiff avers that on or around 23<sup>rd</sup> June, 1973 the Plaintiffs through the late Kibinot Rongoei made an application to be settled in the said parcels of land after the settlement fund trustees took ownership of the same.

The plaintiffs state that on or about 1986, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants proceeded to illegally process titles in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who have now threatened to evict the plaintiff on the suit land without due regard to the interests of the possessors of the land namely the plaintiffs.

The, Plaintiffs avers that they have been in the suit since the year 1973, and have constructed permanent structures and conducted farming both small and large at the exclusion of the defendants herein. The Plaintiffs avers that the said allotment and registration of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was marred by fraud and gross misrepresentation of the material facts. The Plaintiffs pray for a Declaration that the Plaintiffs are the legal and bona fide owners of plot No. Kisumu/Songhor/487 and No. Kisumu/Songhor/490 respectively and an order for permanent injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents and/or servants from interfering, alienating and/or dealing in any other manner with land parcels number Kisumu/Songhor/487 and No. Kisumu/Songhor/490 respectively.

An order for cancellation of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' title and Restoration of the same to the Plaintiffs by way of having the plaintiffs registered as bonafide settlers and owners. The plaintiff ultimately prays for costs of the suit. The Defendants filed a Preliminary Objection whose gist is that the Plaintiffs herein have no locus to sue in person in regards to the claims arising out of the Estate Kibinot Rongei.

That the Plaintiffs ought to have filed this suit as dependents of Kibinot Rongei whom they claim ownership through and not in person.

That the Plaintiffs claim is also time barred as per the Limitation of Actions Act Cap 22 Laws of Kenya. Moreover, the Plaintiffs were aware of existence of suit no. (High Court Nairobi Civil Case no. 2595/1976 Alfred Owuor Vs Yuda Owuro & Hon Attoeny General") and negligently failed to enjoin. That more-so the Plaintiffs ought to have disclosed the said facts of ownership to this Honourable court. That this suit has been brought to this court in clear disregard of the above and is defective and an abuse of the due process of court.

I have considered the preliminary objection raised by the defendants and the submissions on record and do find that the High Court determined the issue of ownership of the suit properties in Nairobi Civil Suit No 2595 of 1976 when it issued a conclusive order on the 24<sup>th</sup> October 1997. The plaintiffs should have applied to review the court order which has already been executed. The plaintiffs in essence are requesting this court review the decision of the High Court through the plaint a procedure that is not recognized by law. Moreover, the plaintiffs who are not claiming adverse possession have come to court too late after the judgment of the High Court in High Court Civil Case number 2595 of 1976 that was made on the 24<sup>th</sup> October 1997 and issued on the 12<sup>th</sup> Day of November 1997 and re –issued on the 22<sup>nd</sup> May 2007 and therefore this court is *functus officio*. Moreover, I do find that a delay of more than 15 years is inordinate and inexcusable and that the same has not been explained.

On the issue of Locus Standi, I do find that the plaintiffs are not claiming as dependants of the late Kibinot Rongoei but their claim is based on the facts that they are settlers on the disputed land having been in possession for more than 12 years. One does not need to take out a grant of letters of administration intestate in such a matter as the claim is in respect of possession by the plaintiffs and not their father or forefathers.

Ultimately, the suit is struck out due to the fact that this court is *functus officio* and that the plaintiffs are guilty of laches. Costs to the defendants.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 15<sup>TH</sup> DAY OF OCTOBER, 2021**

**ANTONY OMBWAYO**

**JUDGE**

*This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*

**ANTONY OMBWAYO**

**JUDGE**