



No.96/2015

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

LAND AND ENVIRONMENT DIVISION

CIVIL CASE NO.124 'B' OF 2012 (O.S)

IN THE MATTER OF LIMITATION OF ACTIONS ACT (CAP 22)

AND

IN THE MATTER OF ACQUISITION OF THE TITLE BY ADVERSE POSSESSION BEING
MUPUTI/KIMUTWA/1813

BETWEEN

CHARLES MUISYO MUTUA PLAINTIFF

VERSUS

JUDAH WAMBUA NTHEKETHA1ST DEFENDANT

SAMUEL MUTIE NZOKA alias

MUTIE NZOKA ITAA 2ND DEFENDANT

J U D G M E N T

1. By **Originating Summons** dated **18.4.2012** the Plaintiff seeks a declaration that he acquired **Muputi/Kimutwa/9813** by adverse possession and thus he be registered as the proprietor. The Originating Summons is supported by Plaintiff's affidavit sworn on 18.4.2015. The Defendant was served but never replied to oppose the same claim.
2. On 29.9.2012 the court directed same Originating Summons be disposed by Affidavits evidence and canvased by written submissions. The Plaintiffs evidence in affidavit is to the effect that on 7.9.1996 the 1st Defendant entered into an agreement for suit plot No.1564 Kimutwa whereof he paid KShs.43,500/-.
3. By 2 supplementing agreements dated 21.9.1996 and 3.11.1996, the 1st Defendant assigned his interest to the Plaintiff and sold suit land to the Plaintiff. The Plaintiff took possession and has since been in continuous, open and uninterrupted occupation of the suit land. The land 1813 was

sub-divided in 1997 into 1564 and 1813. The Plaintiff thus claims to have acquired 1813 by way of adverse possession since the agreement entered became null and void for want of Land Board Consent.

- Under Section 38(1) of Cap. 22 where a person claims to have become entitled by adverse possession to land registered under any of the Act cited in Section 37 He may apply to High Court for an order that he be registered as the proprietor of the land in place of the person that registered as the proprietor of the land. The Plaintiff has cited the following authorities to support his case.
- RAMCO INVESTMENT LTD –VS- INI-DRIVE-IN THEATRE LTD.(2014) *eKLR* 137
- MBIRA –VERSUS- GACHUHI (2002) IEAR 137
- HOSEA –VS- NJIRU & OTHERS 1974 EA 526
- JOSEPH M. SITUMA –VS- NICHOLAS MAKHANU THERONGO 2007 – *eKLR*.

4. The court makes the following findings;

The Plaintiff bought suit land as demonstrated by the agreement attached in 1996, then took possession of the same suit land.

There was no Land Board Consent to bless the transaction within 6 months of the agreement and thus by virtue of Section 6 of Cap 302. The agreement became null and void. The time of 12 years period prescribed by law started to run thereafter.

5. The Plaintiff has proved to have been in open, continuous and uninterrupted occupation of the suit land thus meeting the threshold stipulated in statute and cited authorities. The court thus makes the following orders:

1. The Plaintiff is declared to have acquired Muputi/Kimutwa/1813 and thus court directs he be registered as the owner/proprietor.
2. The Land Registrar to rectify register to substitute 2nd Defendant name with that of the Plaintiff.
3. Since Defendants did not contest the claim, no order as to costs.

Dated and Delivered at Machakos, this 6th day of March, 2015.

CHARLES KARIUKI

JUDGE