



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 445 OF 2010**

**JOSEPH KARIUKI NGUGI ..... PLAINTIFF/RESPONDENT**

**- V E R S U S -**

**CHARLES NGATIA GAITHI..... DEFENDANT/APPLICANT**

**RULING**

[1] The applicant herein filed this notice of motion on 4th April, 2012 praying that this suit be stayed together with its entire proceedings pending the hearing of Hcc. No. 58(os) of 2012. The basis of this application is that one Ibrahim Alisau Mbela sold the suit land to the defendant herein and that Ashmuher Developers Ltd sold the land to the plaintiff in this case.

[2] It is also argued that in Mombasa Hccc. 58(os) of 2012 aforesaid Ibrahim Alisau Mbela has filed a suit of adverse possession against Asmuher Developers Ltd. Joseph Kariuki Ngugi (the respondents herein) Riphaa Charles and Bundi Michael Muriethi and Mohamed Sheikh Bin Shiekh as 1st, 2nd, 3rd and 4th defendants respectively on that originating summons (Hccc. 58(os) of 2012. In his supporting affidavit he attached annexure CNG3 an agreement for sale between Charles Kariuki Njagi and Asmuher Developers Ltd dated 18th May, 2004. He also attached an agreement for sale between Ibrahim Alisau Mbela and Charles Ngatia Gaithi dated 12nd September, 2005.

[3] The question one poses here is, how could the said Ibrahim Alisau Mbela, the applicant in Hcc. No. 58(os) of 2012 filed a case of adverse possession in the year 2012 on one who purchased the property on 18th May, 2004 hardly 8 years before?

Further, how could the said Ibrahim Alisau Mbela the applicant in Hcc. 58(os) of 2012 which is still pending in court herein Mombasa sell on 12th September 2005 a portion of that land to Charles Ngatia Gaithi (the applicant herein) for Kshs. 240,000 when he himself was claiming adverse possession of the same land? What interest did he sell?

[4] The applicants' claim being that he bought the suit land from the said Ibrahim Alisau Mbela. Does he have any legs to stand on, in this application having bought it from one who still claims it under adverse possession.

Even without going deeper in the Mombasa Civil suit Number 58(os) of 2012 I honestly cannot see any reasonable basis to grant the application brought herein by Charles Ngatia Gaithi. Mombasa Civil Suit No. 445 of 2010 should be left to run its cause without any interruption by Mombasa Hcc. No. 58(os) of 2012. The application is dismissed with costs.

**Dated and delivered in open court at Mombasa this 14th day of March, 2014.**

**S. MUKUNYA**

**JUDGE**

In the presence of:

Mr. Mutiso Advocate for Apollo Muinde Advocate for the plaintiff

Mr. Mkhan Advocate for defendant not present.