



Agricultural Finance Corporation using the title as security. The defendant told him that if he wanted to have the land, he should clear the loan which he had with the AFC.

5. On 26/8/2011, the defendant gave the plaintiff a notice to vacate the land. He produced the notice as exhibit 4. The plaintiff then moved to Marakwet Land Disputes Tribunal where he filed a case against the defendant. The case was partly heard and it stalled following the repeal of the Land Disputes Act in November, 2011. The plaintiff produced proceedings of the Tribunal as exhibit 5. The defendant again gave him notice to quit the land in 2012. He produced the notice as exhibit 6.

### **ANALYSIS OF EVIDENCE AND THE LAW.**

6. The evidence of the plaintiff as regards the history of this case is uncontroverted. It is not clear as to when the defendant herein obtained his title to the land. The plaintiff did not annex a certified copy of the title as required. However, be that as it may, it is clear from the plaintiff's evidence that his land was sold at a Public auction in 1989. The defendant who had become the owner upon purchase agreed with the plaintiff that he was to lease the land to the plaintiff at Ksh. 2,000/= per year with effect from 1990.
7. The plaintiff is seeking to be declared as owner of the suit land since he took possession. The land in question belonged to the plaintiff until 1989 when it was sold to the defendant at a public auction. The issue which arises for determination is whether the plaintiff has acquired the land by way of adverse possession. The law regarding adverse possession is now clear. For one to acquire land by adverse possession, he must have been in continuous and uninterrupted possession of the same for a period of over 12 years.
8. In the present case the plaintiff is seeking to be declared to have acquired the land by adverse possession from the time he took possession. If the plaintiff is seeking adverse possession, he can only do so from 1989 when the land ceased to belong to him. It has been held that a lessee or licensee cannot seek land by adverse possession. The plaintiff testified that when the defendant bought the land at a public auction, he agreed with the defendant to be paying him Ksh. 2,000/= per year. He did this until 1996. In 1997 there was an agreement that the plaintiff do buy the land at Ksh. 350,000/=. The defendant indeed acknowledged before the Marakwet Land Disputes Tribunal that he had agreed to sell the land to the plaintiff. He also agreed that there had been part payment.
9. It is therefore clear that between 1989 and 1996, the plaintiff was a licensee on the land and time for adverse possession could not start running as the lease had not been determined. In 1997, the plaintiff agreed to buy the property. There is no contention that he made some payments towards the purchase price. In his own evidence, he has not completed paying the purchase price. Time could not therefore start running before he completes payment of the purchase price. In the case of **Wambugu vs. Njuguna 1983 KLR 172**, the Court of Appeal Judges held that where a claimant is a purchaser under a contract of sale of land, it would be unfair to allow time to run in favour of a purchaser pending completion when it is clear that he was only allowed to continue to stay because of the pending purchase because had it not been for the pending purchase the vendors would have evicted him. The possession can therefore become adverse once the contract is repudiated. In the instant Case, time began to run once the appellant sent a letter to the respondent terminating the agreement.
10. Following the decision of the Court of Appeal herein, it is clear that time started running on 26/8/2011 when the defendant first sent a letter to the plaintiff asking him to quit the land. The defendant's letter meant that he had rescinded the contract of sale between him and the plaintiff has not acquired the land by adverse possession.
11. The Judges of Appeal in the same case held that prior to determination of a licence the occupation is not adverse but with permission. The occupation can only be either with permission or adverse; the two concepts cannot co-exist. It therefore follows that the plaintiff's occupation of the land prior to 26/8/2011 was on lease basis and his occupation could not be adverse to the defendant as

the two concepts do not co-exist.

**DECISION.**

12. For the reasons given above, I find that the plaintiff has not proved his case on a balance of probabilities. The same is hereby dismissed with no order as to costs.

**[Dated, signed and delivered at Kitale on this 2nd day of July, 2014.]**

**E. OBAGA.**

**JUDGE.**

In the presence of M/s. Nyakibia for Mr. Yano for plaintiff. Court Clerk – Kassachoon.

**E. OBAGA.**

**JUDGE.**

**2/7/2014.**