



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CIVIL SUIT 24 OF 2005

IN THE MATTER OF LIMITATION OF ACTIONS CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF LAND PARCEL NO.ELGON/NAMORIO/348

AND

IN THE MATTER OF ADVERSE POSSESSION

BETWEEN

THOMAS KIRUI CHEBUSI..... APPLICANT

~VRS~

PETER WANJALA KANGALA.....1ST RESPONDENT

RICHARD MASIKA KANGALA.....2ND RESPONDENT

NYONGESA KANGALA.....3RD RESPONDENT

JOHN MACHIMBO KANGALA.....4TH RESPONDENT

JUDGMENT

The Applicant entered into agreement with Kangala Embuchi on 9/10/1969 in which he was buying the latter's land parcel number Elgon/Namorio.348 for ksh.5,500/=. The transaction did not receive the blessings of the Land Control Board. The High court in **Kangala Embuchi v. Thomas Kirui Chebus Civil Appeal no.54 of 1986** at Kakamega and the Court of Appeal in **Thomas Kirui Chebus v. Kangala Embochi, Civil Appeal no.121 of 1988** at Kisumu found that the transaction became null and void for all purposes. These appeals arose from **Bungoma Senior Principal Magistrate's Court Civil Case no.121**

“B” of 1984 in which he had sued Kangala Embuchi for the specific performance of the contract. The trial court found in his favour but the two higher courts found against him.

Kangala Embuchi is the father of the Respondents. He subsequently transferred the suit land to them. In the present suit brought by way of originating summons the Applicant sought a declaration that he had become entitled to the suit land by adverse possession because he had since 24/4/1987 been living thereon in a manner that has extinguished the Respondents’ claim to it. The Respondents swore a replying affidavit to oppose the claim and to state that the Applicant has been living on the suit land in the face of these suits and in the face of efforts to have him evicted. They exhibited an eviction order issued on 28/4/1992 by the High Court at Kakamega. The Respondents state that the Applicant has persistently refused to vacate from the suit land. He has sought stay and the matter is still pending. These averments were not challenged by the Applicant.

The Applicant testified in this case and called two witnesses PW2 Ndiema Chesonge and PW3 Benson Masai to say that he bought the suit land in 1969 from Kangala Embochi and since then he has been living thereon with his family.

It is clear from the foregoing that the Respondents and their father have been resisting the Applicant’s claim to the suit land, and that there is an order to have him evicted therefrom. His stay on the land may have been continuous, but has not been peaceful. The matter relating to his eviction is still pending in court to date. The Respondents are resisting his claim to the land, and therefore time for the purposes of adverse possession has not begun to run.

This claim has, therefore, no merit and is dismissed. The Respondents did not attend the hearing and shall not get costs.

Dated, signed and delivered at Bungoma this 12th day of July 2012.

A. O. MUCHELULE
JUDGE