



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KISII**

**Civil Case 95 of 1991**

**NYAMBARORA KERANDI.....PLAINTIFF**

**-VERSUS-**

**NDEGE AMISI .....DEFENDANT**

**R U L I N G**

There is land parcel no. *Kisii/Mokomoni/31* which measures about 18.50 Hectares and which on 4/5/73 was registered in the name of the defendant. The plaintiff alleges that 6 acres of this land is his and he lives on it, that his ownership of the land was determined by Gesima court in boundary land case no.203 of 1957. Following that determination, he states, the 6 acres were parcelled out-to him and he duly assumed possession and occupation of the same. However, the defendant, during the registration of titles, secretly and illegally caused the 6 acres to be registered along with his into the title above. The plaintiff filed this suit on 13/2/91 claiming that the defendant had recently trespassed upon his land and begun cultivating and grazing cattle therein. The defendant was also refusing the plaintiff the use of the land. The suit was brought for a declaration that 6 acres of the title belonged to the plaintiff. He sought the transfer of title of the 6 acres to him . He wanted the title above to be cancelled and rectified to reflect this position. Then the eviction of the defendant and his payment of mesne profits.

The defendant has denied the allegations contained in the plaint and stated that he was never a party to the Gesima court case. He claimed to have bought 4 acres from the plaintiff about 1963 following which the plaintiff moved out to Nyagacho Scheme where he currently stays. The defendant claimed he has had peaceful occupation of all the land contained in his title since 1963.

The hearing of this case has been adjourned many times. On 17/8/2009 the defendant filed a notice of preliminary objection. His objection to the case was grounded on *section 7 of the Limitation of Actions Act (Cap.22)*, that the suit is time-barred. He wants it struck out with costs. He was represented in the application by Mr. Nyawencha whereas Mr. Rono was acting for the plaintiff.

There is no dispute that the cause of action arose on 4/5/1973 when the defendant allegedly secretly and illegally got himself registered as owner of the land which included the 6 acres the plaintiff claims. The suit was filed on 13/2/1991, which would be about 18 years since the cause of action arose. The law allowed the plaintiff to come to court within 12 years. When the 12 years elapsed he was required to seek extension of time, which he did not do. His suit is statute-barred and the objection taken out by the defendant is therefore merited. The same is struck out with costs.

Dated, signed and delivered at Kisii this 2<sup>nd</sup> day of November, 2009

**A.O.MUCHELULE**

**JUDGE**

**2/11/2009**

**Before Hon. A.O.Muchelule –Judge**

**Mongare court clerk**

**Mr. Nyawencha-present**

**COURT: Ruling read in open court.**

**A.O.MUCHELULE**

**JUDGE**