



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO 374 OF 2017

MR SANG II.....PLAINTIFF

=VERSUS=

PETER VON SAAF.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the Defendant claiming the following reliefs:-

a. That the Honourable Court be pleased to order Defendant to compensate the Plaintiff for the renovations done on the suit property together with statutory payments in regards to the suit property made by the Plaintiff for the last 20 years.

b. That a declaration that the Plaintiff acquired the suit property herein by way of adverse possession after the lapse of 12 years since acquiring possession of the suit property herein.

c. That in the alternative and without prejudice to prayer (a) and (b) above, this Honourable Court be pleased to issue a permanent order compelling the defendant herein to allow the Plaintiff Access/Occupation of the suit premises herein.

d. That costs of this suit be borne by the Defendant

e. Damages

f. Any other relief of the Court deems fit and just to grant.

2. The Defendant is the registered owner of **LR No.7785/189** which is at Runda in Nairobi (suit property). There are houses on the suit property

The Defendant who now resides in Vietnam used to stay in the suit property with Bock –Ja Oh as his partner. Bock-Ja Oh is mother to the Plaintiff. When the Defendant went to Vietnam, he allowed Bock-Ja Oh to reside on the suit property on condition that she maintained the property and paid all necessary bills during her lifetime. After Bock-Ja Oh died, the Defendant allowed the Plaintiff to stay on the suit property on condition that he paid for and maintained the suit property.

3. In 2017, the Defendant through his agent wanted to dispose of the suit property. The Plaintiff refused to allow prospective purchasers to access the property claiming that he had acquired it by adverse possession. The Defendant asked the Plaintiff to move out of the suit property within a certain period or he will start charging him rent. The Defendant even gave the Plaintiff a conditional offer for his vacation of the suit property. The Plaintiff did not respond to the letter and the offer lapsed. The Defendant then issued a three months’ notice to the Plaintiff to vacate pursuant to Section 152E of the Land Act. As the Plaintiff did not move to court to challenge the intended eviction, the Defendant moved to evict the Plaintiff. The Plaintiff was eventually evicted from the suit property after which he filed this suit two months after being evicted.

4. The Plaintiff states that he is the one who constructed two houses on the suit property and that he had spent a lot of money to maintain the houses; that he is the one who used to pay for electricity and water bills and he therefore wants to be compensated or that the Court declares that he has acquired the suit property by way of adverse possession or in the alternative he be allowed back into the suit property.

5. The Plaintiff testified that he had been in the suit property for over 20 years. The Plaintiff stated that the Defendant had acknowledged that he was in occupation and that at one point the Defendant offered to compensate him by paying him USD 15000 but he considered the amount to be too low. The Plaintiff stated that he started staying in the suit property in 1987 when he was 17 years old. In 1989, he went to

college and came back in 1993. He left the Defendant staying with his mother in the suit property. The Plaintiff testified that he always thought that the house was a family house and now that he has been evicted, he prays for compensation of more than Kshs.10,000,000/= to enable him purchase an apartment. He stated that he currently resides at Thome Estate where he operates a children's home which looks after needy children.

6. The Defendant did not call any evidence. I have considered the evidence adduced by the Plaintiff and that of his witness. I have also considered the submissions by the Plaintiff. The Defendant was given 21 days to file his submissions from 9th October 2019 the time the date for this judgement was reserved. As at the time of writing this Judgement, the Defendant had not filed submissions and if any were filed then they are not in the file. There are two issues to be determined. The first one is whether the plaintiff has acquired the suit property by way of adverse possession. The second one is whether the Plaintiff is entitled to compensation.

7. There is no contention that the Defenant was living with the Plaintiff's mother as his partner. The Plaintiff's mother had been married by another man who is the father of the Plaintiff. The Plaintiff's witness PW2 Alexander Muema Makau produced a copy of a will which was written by the Defendant. In that will, it is clear that the Defendant had bequeathed the suit property to the plaintiff's mother during her lifetime. After the demise of the Plaintiff's mother, the Plaintiff was allowed to stay in the suit property on condition that he maintained it and paid all utility bills. When the Defendant wanted to have his property back, he gave notice to the Plaintiff to give vacant possession so that he could sell it. When the Plaintiff refused to vacate, the Defendant used lawful means to evict him. The Plaintiff filed this suit two months after he had been evicted. The position is law is that a person who has been lawfully evicted from the land cannot bring a claim of adverse possession thereafter as the owner has already asserted his right to the land. Besides this, the Plaintiff was a licensee and he cannot claim adverse possession. His own mother had been allowed to stay in the suit property during her lifetime. There is no way her estate would lay claim to the suit property by way of adverse possession. I therefore find that the claim of adverse possession cannot stand.

8. The Plaintiff is claiming compensation. His claim is on the basis that he and his mother had spent a lot of money in maintaining the houses on the suit property. The Plaintiff did not adduce any evidence of any money incurred. The Plaintiff produced various water bills and electricity bills and payment receipts for the same. He also produced evidence of payment of rates and rent in respect of the suit property. The Plaintiff had been allowed to stay on the suit property on condition that he paid the bills and maintained the houses. The Plaintiff cannot now claim to be compensated for what he consumed like electricity and water. The rates and rent which he paid were among the conditions he was allowed to stay on the suit property. The

Plaintiff's mother was also allowed to stay on the suit property on similar conditions and the will produced confirms this.

9. There were photographs taken when the Plaintiff was evicted. The swimming pool in the suit property was not functional. The houses had been left in pathetic condition. The Plaintiff cannot therefore claim to have maintained the houses as to claim compensation. The offer to compensate the Plaintiff was conditional upon acceptance of the conditions therein. The Plaintiff did not respond to the offer within 7 days and the same therefore lapsed. The Plaintiff cannot therefore use this as a basis of claiming compensation. The Plaintiff is not entitled to any general damages as he was never wronged. He was evicted from the suit property through a lawful process. He cannot therefore claim any general damages or seek an order for return to the suit property. I find that the Plaintiff has failed to prove his case. The Plaintiff's suit is hereby dismissed with costs to the Defendant.

Dated, Signed and delivered at Nairobi on this 11th day of December 2019.

E.O.OBAGA

JUDGE

In the presence of:

Mr Marete for Mr Lusiola for Plaintiff and

Mr Kahora for Defendant

Court Assistant: Hilda

E.O. OBAGA

JUDGE