



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 189 OF 2014

GEORGE KIMERIA GICHUKI.....PLAINTIFF

=VERSUS=

GEORGE MAGUTI.....DEFENDANT

RULING

1. Judgment in this suit was rendered on 23/6/2017 in the following terms:

(a) The defendant, his agents, servants and/or tenants shall vacate and surrender Land Reference Number 209/10921 comprised in Grant Number 144199 within sixty (60) days from the date of service of the decree herein.

(b) In default of (a) above, an eviction order shall issue to be enforced under the supervision of the Area Police Officer Commanding Police Division.

(c) The defendant shall demolish and remove all the illegal structures erected on the suit property within sixty five (65) days from the date of service of the decree.

(d) The plaintiffs shall have costs of this suit.

2. Subsequently, on 5/10/2017, Joseph Orwaru Naftal and Priscilla Wangari brought a Notice of Motion dated 5/10/2017 seeking among other orders, an order joining them as parties to the suit. They also sought to vacate, vary or set aside the orders issued on 11th July 2017.

3. The applicants contend that they have resided on the suit property for over 12 years, since 2007, hence they ought to have been involved in the proceedings in this suit.

4. The plaintiffs/decree holder opposed the application through a replying affidavit sworn by James Jack Mwangi Gichuki on 23/10/2017. He contended that the applicants are proxies of the defendant being used to scuttle the judgment.

5. The court has carefully considered the application. The applicants contend that they have had uninterrupted and peaceful occupation of the suit property for over 12 years. They further contend that they “purchased and have been in possession of the suit property since 2007”. They do not however indicate whom they purchased the suit property from and whether that seller had title to the property they contend to have acquired through purchase.

6. Secondly, the court notes that judgment in this suit was rendered against George Maguti, his agents, servants and tenants. It was not rendered against the applicants. If the applicants have any claim premised on the doctrine of adverse possession, the **Limitation of Actions Act** has provided a procedure for ventilating that claim. I am satisfied that the judgment against George Maguti is not a bar to the plaintiff’s claim and a separate action by them can properly be pursued outside this suit.

7. Thirdly, the plaintiffs have not presented to court any material to challenge the deceased’s title to the suit property. The deceased’s title is registered and is protected under the Land Registration Act 2012.

8. In light of the foregoing, I am not satisfied that the applicants have made out a case for joinder and for the re-opening of this case. The Notice of Motion dated 5/10/2017 is therefore dismissed. The applicants, Joseph Orwaru Naftal and Priscilla Wangari shall bear costs of the application.

DATED SIGNED AND DELIVERED AT NAIROBI ON THIS 29TH DAY OF JUNE 2018.

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B M EBOSO

JUDGE

In the presence of:-

Mr Miano holding brief for Mr Mandala for the Plaintiff

No appearance for the Defendant

Ms Halima Abdi - Court clerk