



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO.434 OF 2013 (O.S)**

**JOHN MBURU NGURE.....PLAINTIFF**

**=VERSUS=**

**PAULINE NJOKI NGURE.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff is an uncle of the defendant. The suit property in this case that is LR No.Kabete/Gikuni/T.91 (suit property) initially belonged to the plaintiff's father Dishon Ngure Ndungu (deceased). The suit property was transferred to the defendant during the lifetime of the deceased. The defendant became the registered owner on 19<sup>th</sup> February 1997.

2. The plaintiff filed an originating summons on 5<sup>th</sup> April 2013 in which he claims that he has become entitled to half of the suit property by way of adverse possession. The defendant who was duly served neither entered appearance nor filed any replying affidavit. The hearing therefore proceeded by way of formal proof.

3. The plaintiff testified that the suit property belonged to the deceased. The suit property was later transferred into the defendant's name fraudulently. He states that though his father was alive, he was not present during the transfer and that no consent of the land Control Board was applied for or obtained and that he had caused a caution to be registered against the title to the suit property but that caution was removed in a fraudulent manner.

4. The plaintiff states that he stays on the suit property with his younger brother. The defendant had filed a suit against him and his brother at Kiambu Chief Magistrates Court seeking to evict them but the suit was dismissed. He now contends that since he has been living on the suit property since 1963, he has acquired half portion of that property by way of adverse possession. He has constructed permanent houses on the suit property. The defendant does not stay on the suit property.

5. I have considered the evidence adduced by the plaintiff as well as the submissions filed by the plaintiff. I have to decide whether the plaintiff is entitled to half of the suit property by way of adverse possession. It is not contested that prior to the transfer of the suit property into the name of the defendant, the property was in the name of the deceased who is the father to the plaintiff and grandfather to the defendant. A look at the judgement and plaint in Kiambu Chief Magistrates Court Civil suit No.191 of 2005 between the present defendant who was the plaintiff in that suit and the present defendant who was one of the defendants, the plaintiff claim in that suit was based on an order of court obtained in Kiambu Court in 1997 which led her to be registered as owner of the suit property following a suit which had been in court for 9 years.

6. The suit at Kiambu Chief Magistrates Court was dismissed for want of jurisdiction on the part of the trial magistrate. I have not had the advantage of interrogating the case which has been alluded to in the pleadings filed before Kiambu Chief Magistrates Court. However be that as it may, the issue for determination remains whether the plaintiff is entitled to be registered as owner of half of the suit property.

7. Prior to 19<sup>th</sup> February 1997, the suit property was registered in the name of the plaintiff's father who is now deceased. The plaintiff cannot therefore claim to have been on the suit property adversely against the interest of his father. If the plaintiff's case is to be considered, it can only be considered as from 19<sup>th</sup> February 1997 when the suit property was transferred to the defendant. The question which then follows is whether he had been in peaceful and continuous occupation of the suit property without any interruption prior to filing his suit in 2013.

8. The defendant became registered owner of the suit property on 19<sup>th</sup> February 1997. The defendant filed a suit for eviction of the plaintiff and his brother in 2005. The filing of a suit against the plaintiff in Kiambu Chief Magistrates Court effectively stopped time from running in favour of the plaintiff for purposes of a claim for adverse possession. The Plaintiff had therefore been in possession for only 8 years a time which is short of the 12 years statutory period required. I therefore find that the plaintiff's claim fails. The same is hereby dismissed with no order as to costs.

**Dated, Signed and delivered at Nairobi on this 19<sup>TH</sup> day of JULY 2018.**

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of the date and time of delivery  
of judgement.

Court Clerk: Hilda

**E.O.OBAGA**

**JUDGE**