



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**E.L.C. CASE NO. 53 OF 2009**

**CECILIA WANJIRU KAMAU.....1<sup>ST</sup> PLAINTIFF**

**PETER KAMAU KAHUNGI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**GEOFFREY THUO MBIRA.....1<sup>ST</sup> DEFENDANT**

**ANTHONY KIMANI MBIRA.....2<sup>ND</sup> DEFENDANT**

**SERAH WANJIRU MBIRA.....3<sup>RD</sup> DEFENDANT**

**EDWIN MUBI MBIRA.....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiffs, who are husband and wife seek an eviction order against the Defendants from L.R. No. Kiambaa/Karuri/T.538 (“the Suit Property”) which they claim they purchased from the Thuo Mubi, the Defendants’ father in 1979 under a sale agreement. The Defendants were registered as joint owners of the Suit Property on 30.11.1979. They filed this suit on 12/2/2009 claiming that the Defendants have unlawfully occupied their land and have refused to vacate the land despite numerous requests to do so.

2. The Plaintiffs initially applied to have the Defendants hand over possession of the Suit Property to the Plaintiffs but Sitati J. in her ruling delivered on 16.9.2010 directed the Plaintiffs to serve summons to enter appearance upon the Defendants. The Affidavit of service sworn by Willie Mwendwa Velle on 16/12/2010 confirms that the Defendants were served on 13/11/2010. The hearing notice was served on the firm of R. H. Wanga & Company Advocates on 4/4/2018 notifying them that this suit would be heard on 3/7/2018. The Defendants did not attend court on 3/7/2018 when the hearing proceeded.

3. The 1<sup>st</sup> Plaintiff gave evidence on behalf of the 2<sup>nd</sup> Plaintiff who was said to be unwell. She stated that she was registered with her husband as the owners of the Suit Property in 1979. Despite requests to vacate the land, the Defendants have refused to move out of the Suit Property. A copy of the official search produced by the Plaintiff dated 28/1/2009 confirms that the Plaintiffs were registered as owners of the Suit Property on 30/11/1979.

4. The abstract of title showed that the 4<sup>th</sup> Defendant had placed a caution against the Suit Property on 28/7/1989 claiming beneficial interest. The demand letters produced by the Plaintiff are dated 11/1/2009 while the title deed over the Suit Property is dated 11/6/2013. She also produced some documents in Kikuyu language which seem to give an indication of when payments were made. One of these was

translated to English by John Chege Gatete and is dated 10/10/1997 stating that Geoffrey Thuo Mubi had received the balance of Kshs. 6613 and that the 2<sup>nd</sup> Plaintiff did not owe him any money. The terms of the agreement are not clear. The date for completion was also not clear from the documents relied on by the Plaintiff.

5. The issue for determination is whether the reliefs sought by the Plaintiff should be granted. The Plaintiffs bought the land in 1979 and were registered as the owners of the Suit Property. It is not clear why Geoffrey Thuo Mubi, the vendor, did not give the Plaintiffs vacant possession even as at October 1997 when they paid him the balance of the purchase price. It would have been his duty to give possession to the Plaintiffs.

6. The court is inclined to find that the Plaintiffs claim for the suit land is statute-barred by the Limitation of Actions Act having been filed more than twelve years from the date the Plaintiffs' claim arose when they purchased the Suit Property. The suit is dismissed with no orders as to costs.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of August 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Athman holding brief for Mrs. Wambugu for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court