



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

CIVIL SUIT NO. 19 OF 2014 (OS)

ANDREW KIPLANGAT BII.....PLAINTIFF

VERSUS

CHARLES KIPKURURI KOECH.....DEFENDANT

JUDGMENT

(suit for adverse possession; to succeed possession must inter alia be continuous for at least 12 years; plaintiff himself acknowledging that his possession falls short of the 12 years required to file a claim for adverse possession; suit dismissed)

1. The case before me is an Originating Summons filed pursuant to the **provisions of Order 37 Rules 3, 7, 14 and 15 of the Civil Procedure Rules**. The applicant (whom I will hereinafter refer to as the plaintiff) claims to be entitled to 0.35 acres comprised in the **land parcel Kericho/Kiptere/3873** by way of adverse possession. That land is registered in the name of the respondent (whom I will hereinafter refer to as the defendant).
2. In his supporting affidavit to the Originating Summons, the plaintiff deposed that he purchased the claimed piece of land in the year 1997 from the defendant and he paid the whole consideration of Kshs. 24,500/= which was paid both in cash and in kind by the defendant taking maize from the plaintiff. He deposed that he has been in exclusive, quiet, peaceful and continuous occupation of the land in excess of 12 years and has made several developments on the land including planting tea bushes. He deposed that in the year 2008, the defendant entered the land without his consent and started plucking tea bushes.
3. In his replying affidavit, the defendant denied ever having sold the claimed land to the plaintiff. He inter alia denied that the plaintiff has been in quiet and peaceful occupation of the land as claimed.
4. Directions were taken that the matter do proceed by way of viva voce evidence and the parties testified without calling any witnesses.
5. In his evidence, the plaintiff, a teacher by profession, testified that he purchased the land in the year 1997 and that they went to the Land Control Board on 6 March 1998 where consent for the sale transaction was given. He however did not have any documents to demonstrate this. He stated that he took over the land and developed it by planting 2000 tea bushes and that he started harvesting tea in the year 2000. He testified that in the year 2008, the defendant came into the disputed land and stopped him from harvesting the tea. He reported the matter to the police and to the office of the District Officer, Sigowet. He stated that on that day they sat together with elders and the defendant offered to refund the plaintiff plus the value of the tea to get back the land. He pledged to pay by August 2008 but he failed to

pay the same and that is the reason he now came to court.

6. In cross-examination, he stated that the agreement for sale was in February 1997 though he could not recall the exact date. He affirmed that no agreement for sale was ever recorded. He made the first payments by way of maize measured in "gorogoros" (small measuring tins). He stated that the defendant was selling the land because they were facing famine. He also made some payments in cash. He started occupying the land immediately and started planting tea in the year 1998. He did state that his occupation was interrupted by the defendant in the year 2008 and agreed that by that time he had only been in occupation for 11 years.

7. I was not too sure of what transpired after the year 2008 and on questioning the plaintiff, he stated that after 2008, the defendant took occupation and is there up to date.

8. In his evidence, the defendant denied selling the land to the plaintiff. He stated that in the year 1997, he did not have title to the land which was in the name of his father. He testified that it is his father who sold land to the plaintiff and it is he who collected maize from the plaintiff. He was of the view that the plaintiff started plucking his tea and that it is him who actually has a quarrel with the plaintiff for plucking his tea. In cross-examination, he stated inter alia that the plaintiff has his land and he himself has separate land.

9. I have assessed the pleadings and the evidence before me. The claim herein is one for adverse possession. It is trite law that for one to succeed in a claim of this nature, he must demonstrate that he has been in exclusive, peaceful, open, quiet and continuous uninterrupted possession for a duration of at least 12 years without the permission of the land owner. This is expressed in the latin maxim, *nec vi, nec clam, nec precario* (meaning without violence, without secrecy and without permission).

10. This case cannot succeed for the simple reason that the plaintiff himself has acknowledged that his possession was interrupted 11 years after he took possession. In his own evidence, he did state that he took possession in the year 1997 and that this possession was interrupted in the year 2008 before 12 years continuous possession could be accumulated. Upon this acknowledgment by the plaintiff, there was even no need of the defendant testifying.

11. The suit must fail on the plaintiff's own affirmation that the defendant took over possession of the disputed land before he could accumulate 12 years of occupation and he did confirm that to date, it is the defendant who is in possession of the land in dispute.

12. I frankly do not see the need of saying more. This suit fails on the above reasons and is hereby dismissed with costs to the defendant.

13. It is so ordered.

Dated, signed and delivered in open court at Kericho this 3rd day of February 2017

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

KERICHO

PRESENT;

Ms Kitur for the Plaintiff

No appearance on part of M/s Chepkirui Koech & Co. Advocates for Defendant

Court Assistant; Wambany