

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 780 OF 2015

**IN THE MATTER OF CLAIM TO TITLE FOR LAND HELD UNDER TRUST UNDER THE
LAND ACT 2012**

**IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS
OF KENYA**

**IN THE MATTER OF POSSESSION CLAIM TO TITLE BY ADVERSE OVER PLOT TITLE
NO. W1166**

BETWEEN

GEORGE MIRINGU GICHU.....APPLICANT

AND

MARY WAMBUI TOBIAS.....1ST RESPONDENT

JENIFER NYAMBURA.....2ND RESPONDENT

JUDGMENT

This suit was commenced by way of Originating Summons dated 10th August 2015 in which the Applicant, George Miringu Gichu, sought for an order that the Plot No. W1166 be declared as belonging to one Hannah Wambui Wanjiru who purchased it from Fourbro Enterprises.

The Originating Summons was supported by the Applicant's Supporting Affidavit sworn on 10th August 2015 in which he averred that he is one of the founding members and current chairman of Fourbro Enterprises. He further averred that in November 1996, they purchased Plot No. W1166 (hereinafter referred to as the "suit property") located in Dandora Area in Embakasi Constituency from Nyumba Moja Women Group. He averred further that in the year 2012, they decided to dispose of the suit property. He added that on 23rd June 2015, he got a willing buyer by the name of Hannah Wambui Wanjiru to whom he sold the suit property. He further stated that after the transfer was effected and when the said Hannah Wambui Wanjiru started to develop the suit property, the 2nd Respondent restrained her claiming the plot to be hers. He added that the 2nd Respondent has not produced any documents to prove her claim of ownership of the suit property. He sought for the court to grant the orders prayed for in the Originating Summons.

Despite being served with summons to enter appearance, none of the Respondents filed any defence. Interlocutory judgment was entered against both of them on 26th October 2015 upon the request of the Applicant.

The matter proceeded to formal proof on 18th May 2016 when the Applicant testified before court as the only witness. During his testimony, he confirmed the facts already set out above save to add that the 1st

Respondent, Mary Wambui Tobias, was a member of the Nyumba Moja Women Group who supported the 2nd Respondent's claim to ownership of the suit property. He did clarify that the said Hannah Wambui Wanjiru is not involved in this suit though she was in possession of the suit property.

According to the Applicant, Fourbro Enterprises which he was representing sold off the suit property to one Hannah Wambui Wanjiru after receipt from her of the purchase price of Kshs. 250,000/-. A sale agreement to that effect was produced. The Applicant confirmed that the said Hannah Wambui Wanjiru is in possession of the suit property. It is not clear however why the Applicant is the one who filed suit yet they already transferred the suit property. The Applicant are not in any way representing the said Hannah Wambui Wanjiru. If the suit property now belongs to the said Hannah Wambui Wanjiru, she is the one who should have filed this suit and not the Applicant. In fact, the Applicant does not have the locus standi to file or prosecute this suit.

That being my finding, this suit is dismissed with no order as to costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE