



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO 49 OF 2017**

**FORMERLY MERU ELC CASE NO.09 OF 2014**

**WILFRED MIRITI M'MURIKA.....PLAINTIFF**

**VERSUS**

**BENSON NYAGA MWIANDI.....DEFENDANT**

**RULING**

1. This suit was filed on 16<sup>th</sup> May, 2014. It seeks judgment against the defendant that the plaintiff is entitled to be registered as the proprietor of land parcel No. MWIMBI/MURUGI/2826 by way of adverse possession.
2. The defendant has never been served with any suit papers.
3. On 14.7.2015, almost 3 years ago, the plaintiff obtained an order directing that summons in this suit be effected by way of substituted service. Almost 3 years down the line, this order has never been implemented.
4. This court has on several occasions directed the plaintiff to serve the defendant so that apposite directions could be given by the court. All sorts of excuses have been given as to why the defendant has never been served. This included an affidavit of service swearing that the process server had served the defendant through his brother who had declined to acknowledge service.
5. Parties were required to come for pre-trial conferencing and directions on 4.4.2017. The plaintiff was in court but his advocate was absent. Once again, it was made clear that the defendant had not been served.
6. I find it meritorious for this court to dismiss this suit for two reasons.
7. The first one is that having, at his instigation, obtained an order to serve the defendant by way of substituted service way back on 14.7.2015, the plaintiff has failed to implement that order. Court orders cannot be granted in vain. They ought to be obeyed. It is the duty of this court to ensure timely disposal of proceedings before it. I find that the plaintiff who has a duty to assist the court to further the overriding objective to facilitate the just, expeditious and proportionate resolution of this dispute, has failed to uphold his duty. For this reason, this suit merits dismissal.
8. The 2<sup>nd</sup> reason why this suit merits dismissal is buttressed by the contents of the plaintiff's pleadings.

9. In his supporting affidavit sworn on 16<sup>th</sup> May, 2014, at paragraph 8, the plaintiff avers as follows:

***“8. THAT a search in respect of the said parcel of land shows that it was registered in the name of the defendant in 2004 (a copy of the certificate of official search is annexed herein and marked “MMBI”)***

10. By the plaintiff’s own admission and as confirmed by the certificate of official search, the disputed land was registered in the name of the defendant on 2<sup>nd</sup> September, 2004. This suit was filed on 21<sup>st</sup> May, 2014. This is less than 10 years from the time the suit land was registered in the name of the defendant. The period required for adverse possession is 12 years.

11. I opine that the cause of action filed against the defendant is untenable. If a party moves the court through Originating Summons to obtain land by way of adverse possession, the starting point must be the period the decessor has occupied the suit land. Then all other conditions must be satisfied. If the person against whom the suit is filed has been an owner for less than the 12 years required for adverse possession to accrue, then the suit is untenable and only awaits dismissal at some future time. Retaining such suits in the inventory of pending cases only exacerbates the veritable problem of clogging up the judicial system.

12. Where a party has admitted in his pleadings that the statutory period required for adverse possession to accrue has not matured, a court of law is entitled to move appropriately. I find that this suit merits dismissal for the reasons proffered herein.

13. This suit is dismissed.

14. It is so ordered.

Delivered in open court at Chuka this 5<sup>th</sup> day of April, 2017 in the presence of:

CA: Ndegwa

Wilson Miriti M’Murika - plaintiff

**P.M. NJOROGE,**

**JUDGE.**