



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 76 OF 2015**

DOUGLAS MAINA KANGANGI.....PLAINTIFF

VERSUS

JACKSON NJAGI GICHAKI.....DEFENDANT

**JUDGMENT**

**DOUGLAS MAINA KANGANGI** the plaintiff herein filed this suit on 23rd June 2015 seeking judgment against the defendant **JACKSON NJAGI GICHAKI** in the following terms:

- 1. An order authorizing the Deputy Registrar to sign transfer forms in place of the defendant to facilitate the transfer of land parcel No. MWEA/MURINDUKO/305 to the plaintiff.***
- 2. In the alternative, the Court to issue a declaration that the plaintiff has acquired ownership of land parcel No. MWEA/MURINDUKO/305 by way of adverse possession.***
- 3. Costs of the suit and interest.***
- 4. Any other relief the Court may deem fit to grant.***

It is the plaintiff's case that at all material times, the defendant was the registered owner of land parcel No. MWEA/MURINDUKO/305 (thereinafter the suit land) and on or about the 20th June 1984, the plaintiff and defendant entered into an oral agreement whereby the defendant was to sell the same to the plaintiff. The necessary Land Control Board was granted but the plaintiff did not follow up on the transaction until May 2015 when a fresh consent was granted. However, the defendant refused to execute the necessary transfer forms. The plaintiff has however been in possession of the suit land since 1984 and has even buried family members thereon. That led to the filing of this suit.

The defendant did not file defence within the stipulated period and so on 30th July 2015, interlocutory judgment was entered against him but was set aside on 30th December 2015 on condition that the defendant pays the plaintiff throw away costs assessed at Ksh. 8,500. That was not done and so on 11th April 2016, the interlocutory judgment was reinstated and the case came up for formal proof on 29th November 2016.

In his testimony, the plaintiff testified that in 1984, he and the defendant entered into an oral agreement whereby he was to purchase the suit land for Ksh. 20,000. The plaintiff conducted a search and found that indeed the suit land belonged to the defendant. He produced the certificate of search (Plaintiff's Exhibit 1) and the application for consent of the Land Control Board which was granted (Plaintiff's Exhibits 2 and 3). The plaintiff immediately went into possession. The consent granted in 1984 having expired, the plaintiff obtained fresh consent in April 2015 (Plaintiff's Exhibit 4 and 5) but the defendant

refused to transfer the land arguing that it had been sold cheaply. The plaintiff therefore filed this case after writing a demand letter. He also produced photographs of his home on the suit land (Plaintiff's Exhibit 9).

At the end of the trial, his advocate **Mr. MAINA** filed submissions.

I have considered the plaintiff's oral and documentary evidence and the submissions by counsel. As the defendant did not attend the trial, the plaintiff's evidence is un-controverted.

The plaintiff's case as I see it, seeks either an order for specific performance of the oral agreement between him and the defendant or in the alternative, an order that he has acquired the suit land by adverse possession.

The parties entered into an oral agreement for the purchase of the suit land in 1984. That was before the commencement of **Section 3 (3) of the Law of Contract Act** which came into effect on 1st June 2003. Before that date, the law allowed enforcement of an oral agreement for the sale of land so long as the purchaser had taken possession of the property or any part thereof or, being in possession, continues to be in possession and does so otherwise act in furtherance of the contract. There is also evidence that the relevant consent was sought and obtained as required by law (Plaintiff's Exhibits 4 and 5). The plaintiff has been in occupation of the suit land since 1984 and has developed it as evidenced by the photographs of his home (Plaintiff's Exhibit 9). The plaintiff is therefore entitled to the orders of specific performance of his oral agreement entered into in 1984 with respect to the suit land.

The plaintiff seeks the alternative remedy of an order that he has acquired the suit land through adverse possession. A party seeking such an order must, as was held in the case of **KASUVE VS MWAANI INVESTMENT LTD & OTHERS 2004 I K.L.R 184**, prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years after dispossessing the owner thereof or by discontinuation of possession by the registered owner on his own volition. The combined effects of **Section 7, 13 and 17 of the Limitation of Actions Act** is to extinguish the title of the proprietor of land in favour of an adverse possessor of the land. Similarly, both Sections **28 (h) of the Land Registration Act** and **Section 7 (d) of the Land Act** recognize the doctrine of adverse possession. The plaintiff has testified that he has been in possession of the suit land from 1984 to-date. The initial consent to transfer the land expired in 1984 and for purposes of adverse possession, time started running from that year which means that by 1996, the defendant's right to the suit land had been extinguished since there is no evidence that the plaintiff's possession thereof has ever been interrupted. There is nothing to suggest that the plaintiff's possession of the suit land has not been open, exclusive as of right and without any interruption. Indeed he continues in possession of the suit land to-date. The plaintiff has therefore also made out a case for orders of adverse possession with respect to the suit land as prayed.

Ultimately therefore and upon considering the plaintiff's un-controverted evidence herein, I enter judgment for him against the defendant in the following terms:

***1. An order that the Deputy Registrar of this Court signs all the relevant transfer forms in place of the defendant to facilitate the transfer of land parcel No. MWEA/MURINDUKO/305 in favour of the plaintiff.***

***2. There shall be no order as to costs.***

**B.N. OLAO**

**JUDGE**

**5<sup>TH</sup> MAY, 2017**

Judgment dated, delivered and signed in open Court this 5<sup>th</sup> day of May 2017

Mr. Maina for the Plaintiff absent but Plaintiff present in person

Defendant absent

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**5<sup>TH</sup> MAY, 2017**