



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT ELDORET**

**ELC CAUSE NO. 874 OF 2012**

**PATRICK MUCHIRI.....PLAINTIFF**

**VERSUS**

**AGNES MUMBI.....DEFENDANT**

**JUDGMENT**

By a plaint dated 15<sup>th</sup> May 2012, the plaintiff herein filed this suit against the defendant seeking for orders that:

- a. The purported survey ordered vide Eldoret CMCC No. 746 of 1987 cannot be undertaken outside 12 years of the judgement and therefore unenforceable.
- b. Any claim by the defendant to the late John Mungai Muchiri's land namely Kapsabet/Kapsaret Block 1 (Yamumbi)/353 based on the aforesaid decree is incapable of enforcement.
- c. The defendant be permanently restrained from encroaching onto or in any other way interfering with parcel No. Kapsaret/Kapsaret Block 1 (Yamumbi)/353 to the detriment of the beneficiaries of the estate of the late John Mungai Muchiri.

This matter proceeded for hearing on 27<sup>th</sup> September 2017 when the plaintiff testified and called one witness. It was the plaintiff's evidence that he filed this case as an administrator of the estate of the late John Mungai Muchiri who was his deceased father. He produced a copy of letters of administration as exhibit No. 1. The plaintiff further produced a copy of the title in the name of his deceased father as exhibit No 2.

The plaintiff also testified that his late father bought the suit land from Yamumbi farmers in Uasin Gishu County. It was his evidence that his late father had a dispute with his neighbor the late James Nganga Giathe who owned plot no. 354 while theirs was plot No. 353. He stated that he has sued the wife because James Giathe is deceased and the land now belongs to the defendant herein. The dispute was in respect of a claim that the defendant's husband built on plot No. 353 which belonged to the plaintiff's late father. The plaintiff further stated that the elders gave a verdict that James Giathe moves to plot No. 354. The proceedings of yamumbi farmers society was marked as exhibit 3. It was the plaintiff's evidence that James Giathe did not move out of plot No. 353 as ordered by the elders' award. The Court referred (SRMCC No. 746/87) the case back to the elders which proceedings were produced as exhibit No. 4. The plaintiff also produced the proceedings before the elders which resolved that the land be re-surveyed as Jame Giathe had built on plot no. 353 and not 354. The court also issued a decree dated 24/7/92.

It was the plaintiff's evidence that the re- survey was not done until September 2011 which was after 19

years. He stated that the surveyors interfered with the boundaries. It was further the plaintiff's testimony that the liquidator had resolved that he should stay on plot No. 353 and the defendant on 354. The plaintiff produced the liquidator's letter as exhibit No. 7. He stated that the survey was done with an order that was issued in 1992. The plaintiff had a problem with how the survey was done as he produced the original map which was tampered with. He prayed for judgement to be entered in his favour as per the plaint against the defendant.

PW 2 testified and corroborated the evidence of the plaintiff. He stated that he was a secretary of Yamumbi farmers between 1972 -2015. He stated that they deliberated on the case between the parties herein and decided that James Giathe goes to his plot No. 354. He confirmed that the survey was done recently.

The plaintiff's case was closed and since the defendant was not present though served, the defence case was also closed.

Counsel for the plaintiff filed submissions and the defendant's Counsel was also given an opportunity to file submissions within 7 days but the same was never filed.

### **Plaintiff's Counsel's Submissions**

Counsel for the plaintiff gave a background to the plaintiff's case and reiterated the plaintiff's evidence. Miss Adhiambo stated that the issues for determination by the court were as per list of issues dated 13<sup>th</sup> January 2013. She stated that the main bone of contention is whether the survey done in the year 2011 is enforceable having been based on an order issued way back in 1992. It was further her submission that the court should determine whether the defendant's assumed right over the suit land is valid or exists in law. She stated that further operations by the defendant pursuant to the said survey, mutation and interests were a nullity.

It was Counsel's submission that at the time of the purported survey was done, the status quo obtaining and informing orders of the survey had not been existing and /or had been overtaken by events therefore the survey was no longer applicable within the terms and meaning of the decree which was based on the elders' award. The suit land had been affected by the 2007 -2008 post-election violence whereby the structures were burnt down.

Miss Adhiambo further submitted that the survey was undertaken outside the limitation period of 12 years to enforce orders and /or decrees and therefore should be declared a nullity. She stated that if the resurvey was done then, no loss would have been suffered as the status quo had not changed. It was Counsel's submission that the survey was done in 2011 when the defendant had been evicted/displaced and all structures burnt down and no crops were on the ground.

Counsel cited Section 4(4) of the Limitations Act CAP 22 of the Laws of Kenya which states that :

An action may not be brought upon a judgment after the end of 12 years from the date on which the judgment was delivered .

It was Counsel's submission that the actions of enforcing a judgment after the 12 year period was statute barred and a nullity. She further cited the case of Maswai —Vs- Kosgei ,(2004) eKLR (Omolo , Githinji, Devereil JJA ) where the Court of Appeal held that the interpretation of action does not limit itself to suits and proceedings but further includes execution of judgment or enforcement of decretal orders thereof . The court also noted that there was no reasonable or valid ground to substantiate reason for delay or not enforcing the judgment within the statutory limits. The said Honorable Judges allowed the appeal and set aside orders that allowed the respondent to enforce a judgment and further evict the appellant. Counsel also cited the case of MALAKWEN ARAP MASWAI -VS- PAUL KOSGEI , ELDORET CIVIL APPEAL NO. 230/2001 which reiterates the trite principle and established jurisprudence that enforcement of judgments are limited to the 12 year period as per Limitations of Actions Act CAP 22 of the Laws of Kenya.

She finally submitted that the plaintiff had proved his case on a balance of probability and had demonstrated that there has been illegal dealings with the suit land and urged the court to enter judgement in favour of the plaintiff as prayed in the plaint.

### **Analysis and determination**

The issues for determination by the court are very clear in this case. The background to this case and the evidence is as enumerated above. The court is being urged to determine whether a party can enforce a decree or a judgement after the expiry of 12 years. It is not in dispute that the decree or judgement that was to be executed was issued on 24<sup>th</sup> July 1992. It is further not in dispute that the resurvey was done in September 2011 pursuant to the said decree. That is 19 years after the fact. The defendant did not attend court to give evidence in this case and they also never filed submissions as was ordered by the court.

The major issue that the court must determine is as to whether the enforcement of a decree of a judgement by the defendant after 12 years was legal or statute barred. The law is very clear on enforcement of decrees as they are subject to statute of Limitation. I agree with the plaintiff's Counsel's submission that the defendant could not purport to resurvey the suit land after 19 years basing the survey on an order that was issued in 1992. There is no explanation given why the same was not executed within the stipulated period. The evidence of the plaintiff was uncontroverted.

I have considered the evidence of the plaintiff, the documents produced in support of the case together with the submissions of Counsel and I find that the plaintiff has proved his case on a balance of probabilities. I therefore enter judgement in favour of the plaintiff against the defendant and make the following orders:

- a. That the purported survey ordered vide Eldoret CMCC No. 746 of 1987 undertaken outside 12 years of the judgement is statute barred and therefore a nullity.
- b. That any claim by the defendant to the late John Mungai Muchiri's land namely Kapsabet/kapsaret Block 1 (Yamumbi)/353 based on the aforesaid decree is a nullity as it is statute barred.
- c. That the defendant is hereby permanently restrained by way of an injunction from encroaching onto or in any other way interfering with parcel No. Kapsaret/Kapsaret Block 1 (Yamumbi)/353 to the detriment of the beneficiaries of the estate of the late John Mungai Muchiri.
- d. Defendant to pay costs of this suit to the plaintiff.

**Dated and delivered at Eldoret on this 19<sup>th</sup> day of December, 2017.**

**M.A ODENY**

**JUDGE**

**Read in Open Court in the presence of:**

Miss Adhiambo for the Plaintiff.

Mr. Koech – Court Assistant

Counsel for the defendant – absent.