



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

**AT MILIMANI**

**LAND CASE NO. 1042 OF 2016 [OS]**

**HENRY KAHUKI NG'ATI.....PLAINTIFF**

**=VERSUS=**

**PETER JAMES MBUGUA MATHU.....1<sup>ST</sup> DEFENDANT**

**KENYA COMMERCIAL BANK LIMITED.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff filed an Originating Summons against the defendants in which he sought the following reliefs:-

*1) A declaration that the plaintiff has acquired and/or become entitled by adverse possession for over 12 years of all that piece of land measuring 0.08 hectares or thereabouts previously registered under the Registered Land Act (now repealed) comprised in the title number LR Limuru/Rironi/265 situated in Kiambu County and registered in the name of PETER JAMES MBUGUA MATHU.*

*2) A declaration that the 2<sup>nd</sup> defendant's rights and interest by virtue of a change registered in its favour on 9<sup>th</sup> December 1972 against the title number LR Limuru/Rironi/265 has been extinguished by effluence of time and an order do issue compelling the 2<sup>nd</sup> defendant Kenya Commercial Bank Limited to discharge the title number LR Limuru/Rironi/265.*

*3) A vesting order do issue conferring ownership of all that piece of land measuring approximately 0.08 hectares registered under the Registered Land Act (now repealed) comprised in the title number LR Limuru/Rironi/265 registered in the name PETER JAMES MBUGUA MATHU in favour of HENRY KAHUKI NG'ATI.*

*4) That an order do issue compelling the District land Registrar Kiambu to register the plaintiff HENRY KAHUKI NG'ATI as the absolute proprietor of all that property comprised in title number LR Limuru/Rironi/265 measuring approximately 0.08 hectares and a title to issue.*

*5) That without prejudice and in the alternative a declaration to issue that the agreement between the plaintiff and the 2<sup>nd</sup> defendant allowing the plaintiff to repay the 1<sup>st</sup> defendant's loan with the 2<sup>nd</sup> defendant amounted to sale of Limuru/Rironi/265 by private treaty and an order do issue compelling the 2<sup>nd</sup> defendant to discharge the property and transfer the same to*

*the plaintiff.*

**6) That such further or other orders be made as the interests of justice may demand.**

2. The Plaintiff is the son of the late **Clement David Kahuki** (Deceased). The deceased had started the process of purchasing **LR No. Limuru/Rironi/265** (suit property) which was registered in the name of the first defendant but had been charged to the second defendant. The deceased took possession of the suit property in 1979 but later entered into a sale agreement with the first defendant in 1982.

3. The first defendant agreed with the deceased that the deceased was to repay the outstanding loan due to the second defendant after which the suit property was to be transferred to the deceased upon discharge by the second defendant. The deceased took possession of the suit property on that understanding and started repaying the loan owed to the second defendant.

4. During the expansion of the Nairobi –Nakuru Road in 1991, part of the suit property was compulsorily acquired and compensation was paid to the deceased. The deceased was unable to settle the loan owed to the second defendant in full. This forced the second defendant to file Nairobi High Court Civil Case N0.5392 of 1993 (OS) against the deceased and the first defendant seeking vacant possession of the suit property. While this case was still going on, the deceased abandoned the suit property leaving behind the plaintiff who had been on the suit property since 1979.

5. The Plaintiff then approached the second defendant with a proposal to settle the first defendant's liability. The second defendant accepted the plaintiff's proposal. Between 1999 and 2003, the plaintiff made payments amounting to Kshs.300,000/= . In 2003 when the plaintiff went to make further payments to the second defendant, he was informed that the second defendant could not trace records of the loan or even the charge. The plaintiff was therefore unable to make any further payments.

6. The first defendant who was served by substituted service through advertisement in the press neither entered appearance nor filed any replying affidavit. The second defendant filed a replying affidavit in which it contends that the outstanding loan due to it was written off and as such it is ready and willing to hand over the title document to the first defendant as the suit property became ripe for discharge upon the loan being written off.

7. I have gone through the documents in support of the plaintiff's case and the replying affidavit by the second defendant. The plaintiff herein is claiming the suitland in his own right not in his capacity as administrator of the estate of his late father. It is not indicated when his father died but it is clear that his father had abandoned the suit property in 1998. The plaintiff's father had entered into the suitland on the basis that he was to repay the loan owed to the second defendant. It is however clear that he did not clear the loan and he abandoned the suit property in 1998.

8. The plaintiff took over the repayment of the loan which he paid until 2003 when the second defendant could not allow him to continue paying the loan as there were no records. From 2003 until the time he filed this suit, he stayed in the suit property without any interruption either from the first defendant or the second defendant. The replying affidavit of the second defendant is clear that the loan was written off. It is most likely that the said loan was written off in 2003 otherwise if it was still on, he would have been asked to continue making repayments. It is therefore clear that time for purposes of adverse possession in favour of the plaintiff started in 2003. The second defendant no longer had any interest in the land. The plaintiff continued to stay on it without interruption from then. From 2003 to 2016 when this claim was filed is a period of over 12 years. The occupation of the suit property was open and adverse to the interest of the first defendant and therefore the title in the name of the first defendant has been extinguished. This being the case, I find that the plaintiff has proved his case to the required standards. Judgement in his favour is hereby entered in terms of prayers 1, 3 and 4 of the originating summons. Each party to bear their own costs.

Dated, Signed and delivered at **Nairobi** on this **14<sup>th</sup>** day of **December 2017**.

**E.O.OBAGA**

**JUDGE**

In the presence of;-

Mr Mireri for M/s Kangethe for Plaintiff

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**