



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

**AT KITALE**

**LAND CASE NO. 14 OF 2013**

**JAMES KANGETHU NJOROGE.....PLAINTIFF**

**VERSUS**

**C. RUTHMAN (MRS).....1ST DEFENDANT**

**JOHN BERTRAM.....2ND DEFENDANT**

**J U D G E M E N T**

**I N T R O D U C T I O N**

1. The Plaintiff filed an originating summons against the Defendants in which he seeks an order that he has acquired six acres comprised in the title **No. 6157** (suitland) by adverse possession. The suitland which is in Kitale in Trans – Nzoia County is registered in the name of **GIOVANNI THEODORE SOVIC** (Deceased).

2. The Defendants who were served with summons through advertisement in the Daily Nation Newspaper neither entered appearance nor filed reply to the originating summons. The hearing therefore proceeded by way of formal proof.

**PLAINTIFF'S CASE**

3. The Plaintiff testified that in 1973, he agreed with the deceased that he was to purchase the suitland from the deceased. On 3/5/1973 the deceased put him in possession pending a formal agreement which was to be prepared by a lawyer. In the meantime the deceased wrote a note to his daughter who is the first Defendant authorising her to carry on with sale transaction relating to the suitland.

4. The deceased however died before a formal agreement could be prepared. The Plaintiff's advocate thereafter took up the matter. It was later discovered that the deceased had charged the suitland to the second Defendant. The Plaintiff tried to look for the second Defendant who had relocated to South Africa in vain.

5. The Plaintiff contends that he has been in possession of the suitland openly and peacefully since 1973 and that he has now acquired the same by way of adverse possession. He now wants to be registered as owner of the suitland.

**A N A L Y S I S O F E V I D E N C E A N D I S S U E S F O R D E T E R M I N A T I O N**

6. I have looked at the copy of title which the Plaintiff produced as exhibit 2. According to this copy, the suit land was transferred to the deceased on 15/2/1954. In a claim for adverse possession, it is a requirement that a claimant has to file a certified copy of the extract from the register together with the claim. In the present case, the Plaintiff filed a photocopy of a title which was certified on 27/8/2012 as a true copy of the original. It is the Registrar of Titles who is said to have certified the same.

7. According to this photocopy the deceased is still the registered owner of the suitland. The property is still charged to the second Defendant. The question which then arises is whether a claimant in a claim for adverse possession can maintain a claim against persons who are not the title holders.

8. The purpose of filing a claim for adverse possession is for the claimant to show that he has been on land of a known owner for a period prescribed by the law and that he is seeking the court to declare that the title to the true owner has been extinguished. Such claim cannot be filed against persons who are not the registered owners. In the instant case, the record shows that the suitland is still in the name of the deceased.

9. The Plaintiff cannot file a claim against persons who are not the administrators of the estate of the deceased. Though it is alleged that the first Defendant is daughter to the deceased, there is no evidence that she is the sole or one of the administrators of the estate of the deceased. A mere note from the deceased that he had given his daughter authority to carry on the sale transaction did not give her power over the suitland. Equally the mere fact that the second Defendant is the chargee of the suitland does not confer on him any interest in the suitland as to make him capable of being sued for a claim of adverse possession.

10. The Plaintiff produced a letter dated 24/4/1975 [**Exhibit 4**] written by **Messers Shaw & Carruthers Advocates**. This letter was addressed to the Public Trustee. This letter refers to **Administration Cause No 134 of 1974** in respect of the estate of the deceased. This letter talks of the intended sale of the suitland to the Plaintiff. The lawyers state in their letter that the deceased had instructed them during his lifetime to carry on with the sale. The sale was however delayed because the person to whom the suitland had been charged, had relocated to South Africa and that he had since died. The second Defendant is described in that letter as the late **J.B. Steyn**. It is therefore dishonest on the Part of the Plaintiff to purport to sue a deceased person by pretending that he is still alive and living in South Africa.

11. The Plaintiff was in possession of the letter of 24/4/1975 which clearly indicated that **J.B. Steyn**, the second Defendant was dead by 1975. He could not therefore purport to serve him with a demand letter [**Exhibit 6**] on 3/10/2012 through the Kenya High Commission, South Africa.

12. It is not known when the deceased died. A look at the correspondence from the advocates for the Plaintiff show that the deceased may have died between 1973 and 1974.

This is because there is a succession cause being **Succession Cause No. 134 of 1974** which is mentioned in one of the letters dated 24/4/1975 [**Exhibit 4**]. Another letter dated 24/10/1974 [**Exhibit 5**] talks of the deceased's intention to sell the suitland to the Plaintiff at a sum of **Kshs 30,000/-**. Though the Plaintiff's evidence is that he bought the suitland, the documents he produced show the contrary. The plaintiff produced a hand written note dated 3/5/1973 [**Exhibit 1**]. This is the note which he alleges is the one which put him in possession of the suitland. On the following day i.e 4/5/1973, the deceased is alleged to have written another note [**Exhibit 3**] this time type written, giving his daughter authority to handle the sale of the suitland.

13. It is interesting that whereas the said two notes are said to have been signed by the deceased, a cursory look at the two signatures shows the two to be quite different. The Plaintiff had to go to his lawyers the following year i.e 24/10/1974 for his lawyers to write a letter addressed to whom it may concern, stating that the deceased had intended to sell the suit land to him for **Kshs 30,000/-** and that the Plaintiff had been put in possession on 3/5/1973 but that the transaction was not complete as the deceased died before the same could be completed.

14. The finding that this suit has been brought against wrong parties is enough to have the same dismissed. There is no need for me to consider whether the Plaintiff has proved his claim for adverse possession as to do so will amount to engaging myself in an academic exercise. The Plaintiff's suit is therefore dismissed with no order as to costs.

Dated, signed and delivered at Kitale on this 4th day of May 2016.

**E. OBAGA**

**JUDGE**

**COURT:** Judgement signed in open court at 2.45 pm in the absence of the Plaintiff and his advocate who were aware of the date of delivery of the Judgement.

Court Assistant – Isabellah

**E. OBAGA**

**JUDGE**

**4/5/16**