



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1288 OF 2007

JOHN NDUNGU MBUGUA.....PLAINTIFF

-VERSUS-

LEAH W. MUCHOHI

(sued as the legal representative of the estate of

MUCHOHI GIKONYO-DECEASED).....DEFENDANT

JUDGMENT

Introduction

The Plaintiff instituted this suit against Charles G. Muchohi, Ruiru M. Muchohi, Leah W. Muchohi and Kuria M. Muchohi in their capacity as legal representatives of the estate of Muchohi Gikonyo (deceased) By way of an Originating Summons dated 29th August 2007. Leah W. Muchohi subsequently sought to be substituted as the sole Defendant in this suit through a Notice of Motion dated 21st March 2014 which was allowed by the Court on 10th December 2014. The Plaintiff is seeking a determination of the following questions in the said Originating Summons:

1. Whether the Court should declare that the Plaintiff has acquired title from the late Muchohi Gikonyo over the property known as Dagoretti/Riruta/770 (hereinafter referred to as “the suit property”) by way of adverse possession.
2. Whether the Defendant was barred by time on 16th March 2007 from executing the decree issued by this Court on 28th June 1990 in HCCC No. 3480 of 1985 (Muchohi Gikonyo vs. Edward Riitho & 2 others) consolidated with HCCC No. 364 of 1996 (John Ndung'u Mbugua vs. Muchohi Gikonyo) declaring that the deceased had acquired title to the suit property by virtue of the provisions of section 4(4) of the Limitation of Actions Act.
3. Whether the Defendant now holds title to the suit property in trust for the Plaintiff.
4. Whether the Court should make an order that the plaintiff be registered as the proprietor of the suit property in place of the deceased.
5. Whether the Defendants by themselves, their servants, agents, representatives and/or assigns and all those deriving title from them or any of them whatsoever should be restrained by way of a permanent injunction from evicting and/or removing the Plaintiff from the suit property or in any manner interfering with the Plaintiff's peaceful occupation and actual possession of the suit property.
6. Whether the Defendants by themselves, their servants, agents, representatives and/or assigns and

all those deriving title from them or any of them whatsoever should be restrained by way of a permanent injunction from selling, leasing, charging disposing off, interfering with or in any other manner whatsoever dealing with the suit property in a manner which is inconsistent with the Plaintiffs rights herein.

7. Whether the Defendant should be condemned to pay costs of this suit.

The Defendant responded to the Originating Summons through a replying affidavit sworn by Charles Gikonyo Muchohi (deceased) on 13th March 2012 and a notice of preliminary objection dated 8th October 2007. When the suit was mentioned for directions on 22nd June 2012, the Court directed that hearing be on the basis of pleadings, affidavits, the preliminary objection and submissions. The cases put forward by the respective parties as summarized from the pleadings and affidavits filed hereby follow.

The Plaintiff's Case

The Plaintiff in his supporting affidavit sworn on 29th August 2007 stated that he bought the suit property from Edward Riitho (deceased) in 1983 and that he was registered as the proprietor on 10th December 1985. He exhibited a copy of the abstract of title to the suit property as well as a copy of a title dated 13th December 1985 issued in his name. He stated that possession of the suit property had been granted to him prior to the registration in his favour.

The Plaintiff averred that prior to his registration as the proprietor of the suit property, Muchohi Gikonyo (deceased) had commenced proceedings in Nairobi HCCC No. 3480 of 1985 against Edward Riitho (deceased) and his father Hezron Kamau Waweru seeking a declaration that he had acquired title to the suit property by way of adverse possession. The Plaintiff annexed as evidence a Plaintiff and defence dated 29th October 1985 and 21st April 1986 respectively as well as an amended Plaintiff dated 22nd January 1986 showing that he was joined in the suit as a 3rd Defendant.

The Plaintiff averred that he filed his own suit seeking eviction against Muchohi Gikonyo (deceased) in Nairobi HCCC No. 364 of 1986 whose pleadings were exhibited. It is contended that during the pendency of the suit, Mr. Charles Muchohi Gikonyo who was a son of Muchohi Gikonyo (deceased) and was in occupation of a portion of the suit property abandoned the same and left it in the Plaintiff's exclusive possession.

It is the Plaintiff's evidence that HCCC No. 3480 of 1985 and HCCC No. 364 of 1986 were consolidated and that through a judgement delivered on 28th June 1990, the Court dismissed HCCC No. 364 of 1986 and made a declaration that Muchohi Gikonyo (deceased) had acquired title to the suit property by way of prescription. Copies of the proceedings and a decree issued on 9th September 1995 were exhibited, and the Plaintiff averred that although he instructed his advocates to appeal against the judgement, communication breakdown between him and his advocate led to a lapse of the time provided for appeal. The Plaintiff averred that efforts to have the time for lodging appeal extended were not successful.

According to the Plaintiff, as soon as the Court made a declaration on 28th June 1990 that Muchohi Gikonyo (deceased) was the owner of the suit property, his possession of the same became adverse to the title of Muchohi Gikonyo (deceased). The Plaintiff averred that time for purposes of prescription started running against Muchohi Gikonyo (deceased).

It is the Plaintiff's case that he has been in open, exclusive, peaceful and actual possession of the suit property without any interruption from the Defendants for more than 17 years since judgement was delivered on 28th June 1990. According to the Plaintiff, the said period is more than the 12 years required under the law for him to acquire title against Muchohi Gikonyo (deceased) by way of adverse possession. It is the Plaintiff's case that he has acquired an absolute title against Muchohi Gikonyo (deceased) by way of adverse possession.

While annexing a copy of a valuation report dated 1st July 1997, the Plaintiff averred that during his

occupation, he openly carried out actions in the suit property which are inconsistent with the enjoyment of the property by the Defendants by developing permanent buildings. He averred that on 16th March 2007, the Defendant registered the decree issued on 28th June 1990 in HCCC No. 3485 of 1985 against title to the suit property and obtained a title in the name of Muchohi Gikonyo (deceased).

According to the Plaintiff, the purported execution of the decree issued in 28th June 1990 was wrongful since no notice to show cause was served upon him in accordance with the Civil Procedure Rules governing execution of decrees that are more than one year old. Further, the Plaintiff stated that the execution of the decree was time barred under section 4(4) of the Limitation of Actions Act and therefore, that the entries made on 16th March 2007 against the title are wrongful and should be expunged and title issued in the name of Muchohi Gikonyo (deceased) cancelled.

Through a supplementary affidavit sworn on 14th June 2012, the Plaintiff stated that he did not appeal against the judgement delivered in HCCC No. 3480 of 1985 as alleged by the Defendant. He averred that his application dated 24th June 1998 seeking to review the judgement delivered on 28th June 1998 was dismissed through a ruling delivered on 15th March 2001 whose copy was annexed to the replying affidavit.

While admitting that an order directing parties to maintain *status quo* was issued by the Court on 29th October 1998, the Plaintiff has averred that the order did not prevent the execution of the judgement as alleged by the Defendant. It is the Plaintiff's averment that by an application dated 31st October 1996, the Defendants sought orders for the Deputy Registrar to execute the transfer of the suit property in their favour and authorize his eviction from the suit property. The Plaintiff has contended that the application was heard and allowed and a copy of the application dated 31st October 1996 and an order made on 8th January 1998 have been annexed as evidence.

According to the Plaintiff, when the order for maintenance of *status quo* was made on 29th October 1998, the Defendants had in their favour a judgement declaring that Muchohi Gikonyo (deceased) had acquired the suit property by adverse possession as well as an order dated 25th November 1997 allowing the Deputy Registrar to execute the transfer and authorize his eviction.

It is the Plaintiff's case that since neither the judgement nor the order of 25th November 1997 had been set aside, varied or appealed from, the order for maintenance of *status quo* did not stop time from running against the Defendants as the said order did not stop the Defendants from acting on the order of 25th November 1997. Lastly, the Plaintiff averred that the suit herein was not *res judicata* since the issue as to whether he had acquired the suit property from the Defendant by way of adverse possession since the judgement of HCCC No. 3480 of 1985 had not been determined by a court of competent jurisdiction.

The Defendant's case

The Defendant in the replying affidavit dated 13th March 2012 stated that there had been two suits namely HCCC No. 2480 of 1985 and HCCC No. 364 of 1986 which were consolidated and heard between 3rd June 1987 and 5th October 1998 and that judgment was delivered on 28th June 1990.

The Defendant contended that the Plaintiff preferred an appeal in Civil Appeal No. 136 of 2002 which appeal was scheduled for hearing on 14th May 2012 and a copy of the record of appeal was annexed as evidence. The Defendant has averred that the Plaintiff failed to disclose to the court that on 24th June 1990, he filed an application for review of the judgement dated 28th June 1990. The Defendant has contended that on 29th October 1998, the court directed that *status quo* be maintained pending the hearing of the Plaintiff's application for review and a copy of the order issued on 29th October 1998 has been availed.

It is the Defendant's averment that the application for review was heard and dismissed on 15th March

2001 and a copy of the ruling delivered thereto has been annexed as evidence. The Defendant has contended that on 13th June 2001, she made an application seeking to raise the order of *status quo* issued on 29th October 1998. It is the Defendant's case that even if time was running against her, the same could only have been from 15th March 2001 when the order for *status quo* was discharged by the Court. The Defendant has averred that the matter before the court is *res judicata* and an abuse of the court process.

The Defendant in a notice of preliminary objection dated 8th October 2007 stated that the suit property was the subject of HCCC No. 3480 of 1985(as consolidated with HCCC No. 364 of 1986) between the same parties and that the court could therefore not re-try the same issue since it was *res judicata*.

Counsel for the Defendant submitted that following delivery of judgement in HCCC No. 3480 of 1985 (consolidated with HCCC No. 364 of 1986) on 28th June 1990, the Plaintiff did not prefer an appeal and opted for review of the judgement through an application dated 24th June 1998. It is the Defendant's submission that on 29th October 1998, the Court ordered maintenance of *status quo* pending the hearing and determination of the Plaintiff's application for review.

The Defendant averred that on 30th October 1998, the Plaintiff registered the order for *status quo* against the title to the suit property which remains registered against the title to date. Counsel argued that following the dismissal of the Plaintiff's application for review on 15th March 2001, the Defendant sought removal of the order registered against the title through an application dated 13th June 2001. It was submitted that the Plaintiff lodged an appeal in Civil Appeal No. 136 of 2002.

The Issues and Determination

The parties filed written submissions on their respective cases, and the Plaintiff in submissions dated 28th March 2014 reiterated the facts as pleaded while the Defendant in submissions dated 12th February 2015 grounded her arguments on her notice of preliminary objection dated 8th October 2007 and a replying affidavit dated 13th March 2012. I have read and considered the pleadings and submissions filed by the parties and find that there are three issues for determination namely:

1. Whether the suit filed by the Plaintiff herein is *res judicata*
2. Whether the Plaintiff has acquired title to the suit property by way of adverse possession
3. Whether the Defendant was time barred from executing judgement delivered on 28th June 1990
4. Whether the Plaintiff is entitled to the remedies sought.

Whether the Plaintiff's suit is *res judicata*

The Counsel for the Plaintiff relied on the case of **Kagai Mwangi vs. Ephantus Ngari Mwangi (2014) eKLR** where the Court enumerated the essential elements of *res judicata* as set out under section 7 of the Civil Procedure Act. While conceding that parties in the instant suit had litigated of the suit property in HCCC No. 3480 of 1985 (consolidated with HCCC No. 364 of 1986), the Plaintiff argued that the matter substantially in issue in the two previous suits is not directly and substantially in issue in the present suit.

The Plaintiff submitted that this case was brought after 17 years had passed since judgment in the previous case had been delivered. Counsel argued that the Plaintiff's claim was for a declaration that since delivery of judgement in the previous suit and through passage of time, the Plaintiff had acquired title to the suit property from Muchohi Gikonyo (deceased) through adverse possession.

Counsel for the Defendant submitted that the suit property was the subject of HCCC No. 3480 of 1985 (consolidated with HCCC No. 364 of 1986). The Defendant made reference to section 7 of the Civil Procedure Act and the case of **Kagai Mwangi vs. Ephantus Ngari Mwangi (2014) eKLR** and submitted that all the necessary ingredients that constitute *res judicata* were present in this suit.

It is not contested that this is the third suit between the parties herein as regards the suit property. The

Plaintiff's evidence was that he bought the suit property from Edward Riitho (deceased) in 1983 and that he was registered as proprietor on 10th December 1985. Prior to the Plaintiff's registration as proprietor, Muchohi Gikonyo (deceased) instituted HCCC No. 3480 of 1985 against Edward Riitho (deceased) seeking a declaration that he had acquired title to the suit property by way of adverse possession.

The Plaintiff also filed HCCC No. 364 of 1986 in which he sought to evict Muchohi Gikonyo (deceased) from his property. The two suits were consolidated and on 28th June 1990, the court found in favour of Muchohi Gikonyo (deceased) and declared that he had acquired by adverse possession an absolute title to the suit property. The court went ahead to dismiss HCCC No. 364 of 1986 filed by the Plaintiff herein.

The substantive law on the doctrine of *res judicata* is section 7 of the Civil Procedure Act which provides that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

Therefore, for a suit or issue to be *res judicata*, the matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit between the same parties and the issue must have been heard and finally decided by a competent court. The requirements for *res judicata* to arise as stated in the said section are that –

- a. There must have been a previous suit between the same parties.
- b. The issue before the court must have been finally determined in that previous suit.
- c. The issue must have been determined by a court having competent jurisdiction.

Section 7 of the Civil Procedure Act has further explanations on the application of these requirements, and the main objective of the doctrine of *res judicata* as can be seen from these explanations is to have issues in a suit litigated with finality.

It is my view that the issue in the present case however disguised is that of ownership of the suit property, and the Plaintiff is essentially claiming ownership of the same by virtue of adverse possession. This same issue of ownership of the suit property was litigated in HCCC No. 364 of 1986 in which a competent court held with finality that Muchohi Gikonyo (Deceased) was the owner of the suit property. It is therefore my finding that the issue of ownership of the suit property cannot be relitigated, and the only claims that the Plaintiff can make as regards the suit property is with regard to the execution and/or enforcement proceedings of the judgment delivered in HCCC No. 364 of 1986.

Whether the Plaintiff has acquired title to the suit property by way of adverse possession

Notwithstanding the finding of the Court that the claim by the Plaintiff of ownership of the suit property is *res judicata*, the arguments made by the Plaintiff on the issue of adverse possession and findings thereof will be considered by the Court only for purposes of record.

The Plaintiff claims in this regard that following delivery of judgement in the consolidated suits on 28th June 1990, his continued occupation of the suit property for 17 years has entitled him to acquire an absolute title by way of adverse possession against Muchohi Gikonyo (deceased). It was further submitted that the Plaintiff's claim was also made on the basis that Muchohi Gikonyo (deceased) had failed to execute the decree in HCCC No. 3480 of 1985 (consolidated with HCCC 364 of 1986) for more than 12 years and was therefore barred from executing the same under section 4(4) of the Limitation of Actions Act.

Counsel for the Plaintiff made reference to the cases of Elijah Ikoha Ikanzo vs. Joseph Angila Asutsa (2006) eKLR and Harison Kaara vs. Gichobi Kaara & another(1997)eKLR and submitted that for a

claimant to succeed in a claim for adverse possession, he must prove that he was in exclusive and continuous possession of the land for a period of not less than 12 years. The Plaintiff contended that such possession should have been open and not secret, peaceful and not hostile and further, that the possession must be hostile/adverse to the interests of the owner.

It was submitted that a notice dated 1st August 2008 was served upon tenants occupying a commercial building in the suit property failing which they would be forcibly evicted prompting the Plaintiff to commence these proceedings. Counsel submitted that the fact of the Plaintiff's possession from 28th June 1990 is factual and not in dispute otherwise the Defendants would not have served the notices upon the Plaintiff's tenants.

In further submission, the Plaintiff contended that once Muchohi Gikonyo (deceased) was declared the owner of the suit property on 28th November 1990, his continued occupation became adverse to the title of Muchohi Gikonyo (deceased). The Plaintiff argued that during his occupation, he carried out actions which are inconsistent with the Defendant's enjoyment of the suit property by building a permanent commercial building which was valued at approximately Kshs 25,000,000/- in 1997.

It is the Plaintiff's submission that the said actions which were hostile to the Defendant's interests in the suit property had been done openly and with the knowledge of both Muchohi Gikonyo (deceased) and the Defendant. Reliance was placed on the case of **Ramco Investment Ltd vs. Uni-Drive-In Theatre Ltd (2014)** where the court cited with approval the Court of Appeal decision in **Wambugu vs. Njuguna (1983) KLR 172** and **Littledale vs. Liverpool College (1990)1 Ch. 19** to the effect that to defeat a title by dispossessing the former owner, acts which are inconsistent with the owner's enjoyment of the soil for purpose for which he intended to use it must be done.

The Plaintiff submitted that by virtue of his occupation and development of a permanent commercial building which he let out to various tenants, he was using the suit property as though it was solely his own and therefore, that the Defendant was dispossessed of the suit property. For this submission, the Plaintiff relied on the case of **Harison Kaara vs. Gichobi Kaara & another**(supra).

The period in which the Plaintiff has been in occupation of the suit property after delivery of the judgement is contested by the Defendant. Counsel for the Defendant submitted that following delivery of judgement in HCCC No. 3480 of 1985 (consolidated with HCCC No. 364 of 1986) on 28th June 1990, the Plaintiff did not prefer an appeal and opted for review of the judgement through an application dated 24th June 1998. It is the Defendant's submission that on 29th October 1998, the Court ordered maintenance of *status quo* pending the hearing and determination of the Plaintiff's application for review. The Defendant therefore argues that time could only have run against her for purposes of prescription from 15th March 2001.

According to the Defendant, time could have only run against her from 15th March 2001 when the Plaintiff's application for review was discharged and the orders for *status quo* were discharged and therefore, that the question of adverse possession can never arise in these circumstances. It was submitted that immediately title was registered in the name of the Defendant on 16th March 2007, the Defendant sought to evict the Plaintiff triggering these proceedings.

The Plaintiff in response contended that the order made on 29th October 1998 requiring maintenance of *status quo* did not stop time from running. The Plaintiff maintained that at the time the order was made, Muchohi Gikonyo (deceased) had been declared owner of the suit property and had also obtained orders allowing the Deputy Registrar to execute the transfer in his favour and authorizing the Plaintiff's eviction.

I am in agreement with the Defendant's assertion that the orders for *status quo* interrupted time from running in the Plaintiff's favour. The court in the case of **Republic vs. National Environment Tribunal Ex-parte Palm Homes Ltd & another (2013) eKLR** explained the meaning and effect of maintenance of *status quo* as follows:

"That leads me to the issue *status quo*. The word *status quo* is defined by *Black's Law Dictionary*, 9th Edition at page 155 as "state in which" that is "the situation that currently exists". *Ballentine's Law Dictionary* by Jack G Handler at page 522 defines the same word as "the existing state of affairs: things as they are". *A Concise Law Dictionary* by P G Osborn, 5th Edition at page 300 defines the word as "the state in which things are, were". Therefore when a Court of law orders or a statute ordains that the *status quo* be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining *status quo* is meant to preserve existing state of affairs."

The Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited*, Nairobi Civil Application No. 38 of 2012 (UR 25/2012) has also pronounced itself on the meaning of *status quo* thus:

"Status quo" in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events."

In the present suit, the Plaintiff was in occupation of the suit property when the order for *status quo* was made. The position in law as held in *Githu -vs- Ndeete (1984) KLR 776* that time ceases to run under the Limitation of Action Act either when the owner takes or asserts his right or when his right is admitted by adverse possession. Further, that assertion occurs when the owner takes legal proceedings or makes an effective entry into the land.

In the present case the Plaintiff is relying on his possession of the suit property as from the date of delivery of judgement in HCCC No. 3480 of 1985 (consolidated with HCCC No. 364 of 1986) on 28th June 1990. However, the said Plaintiff cannot have his cake and eat it as he subsequently commenced legal proceedings that effectively stopped time from running, and the court record shows that the Defendant participated in and defended the Plaintiff's application for review of the judgment, which resulted in the Defendant being precluded from taking any steps as regards possession of the suit property by a court order.

It is thus my view, that time for purposes of adverse possession if any, started to run from 15th March 2001 when the orders for *status quo* were discharged. The Defendant subsequently then issued eviction notices to the Plaintiff's tenants in 2007 prompting the Plaintiff to file these proceedings on 29th August 2007. Since time began to run in 2001, the threshold of 12 years required for the Plaintiff to make a claim based on adverse possession had not therefore arisen and has not been met.

Lastly, it is also my view that since the Plaintiff has not been able to prove that he is entitled to the suit property under a substantive law, he cannot rely on procedural law to defeat the Defendant's claim. I am persuaded by the court's decision in *Walter Kamau Kinyanjui vs. Wambui Wambu (2005) eKLR* where the court stated thus:

"The same reasoning will apply to the respondent's contention that the eviction orders of 1992 had expired after 12 years. Yes, they did expire. But that will not alter the fact that the suit land has been judged to be the property, in law, of the applicant. In relation to that property, the respondent has no legal foothold; she may not question the applicant's absolute rights to his own property unless she has a substantive motion claiming a share of the applicant's prima facie exclusive property, for instance through claims based on trust or adverse possession. The twelve-year rule sought to be relied upon by the respondent is not available to her; she has no substantive legal rights and has made no claims to such; therefore she cannot rely on a procedural rule on the footing that such secondary rule could validate a trespass upon substantive property rights...It is clear to me, in the circumstances, that the expiration of a period of more than twelve years since the eviction order of 28th March, 1992 has created no rights for any unauthorised occupation of the plaintiff's land; and such expiration of time limited for the life of Court orders does not deprive the proprietor of his

legal rights against trespass to his land.”

Whether the Defendant was time barred from executing judgement delivered on 28th June 1990

Counsel argued that a period of more than 17 years since judgement was delivered had passed and that prior to the notice of 1st August 2007, no effort had been made by the Defendant to execute the decree by evicting him from the suit property. The Plaintiff relied on section 4(4) of the Limitation of Actions Act and submitted that since more than 12 years had lapsed from the date of judgement, the Defendant could not execute the decree as she was time barred by statute. Counsel contended that the Defendant should have followed the execution procedures set out in the Civil Procedure Act.

In respect to the Defendant's assertion that the running of time was interrupted by an order made on 29th October 1998 requiring maintenance of *status quo*, the Plaintiff submitted that several factors have to be considered in order to understand the *status quo* prevailing at the time. Counsel argued that when the order of 29th October 1998 was made, Muchohi Gikonyo (deceased) had a judgement and decree declaring that he had acquired the suit property by adverse possession and had orders allowing the Deputy Registrar to execute the transfer in his favour. It is the Plaintiff's submission that the order of 29th October 1998 could not stop the running of time since *the status quo* was all in favour of the Defendant.

Counsel argued that the order for *status quo* did not mean that judgement could not be executed. The Plaintiff urged the court to find that the Defendant were time barred on 16th March 2007 when they registered a transfer of the suit property in favour of Muchohi Gikonyo (deceased) and when they issued eviction notices in mid-August 2007. The Plaintiff submitted that the Defendant holds title in trust for him and he urged the court to find that he is entitled to be registered as proprietor of the suit property in the place of Muchohi Gikonyo (deceased) and to order that the name of Muchohi Gikonyo (deceased) be deleted from the title thereof and be substituted with his name.

It is the Defendant's submission that she attempted to execute the judgement in her favour through seeking orders to have the Deputy Registrar execute transfer in her favour and for the eviction of the Plaintiff which orders were granted on 25th November 1997. Counsel submitted that no eviction could however be effected since title was not registered in the name of the Defendant and therefore, that the Plaintiff cannot claim to have held an adverse title against the Defendant in the circumstances.

Section 4(4) of the Limitation of Actions Act provides that an action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered. However, the said section also provides for situations where this period may change or be extended as follows:

“(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

In the present case it is not disputed that there were subsequent orders of *status quo* to be maintained with respect to the suit property made on 28th October 1998 that were discharged on 15th March 2001, which is when time started to run for purposes of enforcement of the judgment. Therefore as at the time delivery of the suit property was demanded by the Defendant on 1st August 2007, the 12 years limitation period for the enforcement of the judgement had not expired.

Whether the Plaintiff is entitled to the remedies sought.

This Court finds from the foregoing that the Plaintiff has not proved his case on the basis of a balance of probabilities, and is therefore not entitled to the reliefs he seeks. The Originating Summons dated 29th

August 2007 is hereby accordingly dismissed with costs to the Defendant.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this ____24th____ day of ____March____, 2015.

P. NYAMWEYA

JUDGE