



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 9 of 2008

MUNYI ALFRED.....APPLICANT

VERSUS

JAMES MACHARIA KARIUKI.....1ST RESPONDENT

PETER MIRIGU KARIUKI.....2ND RESPONDENT

J U D G M E N T

The Applicant filed his Originating Summons on 8/2/2008. He is seeking a declaration against both defendants to the effect that he has acquired Title to Land Parcel No. NTHAWA/RIANDU/3158 by way of adverse possession. He says that he has been in continuous and uninterrupted possession and occupation of the said parcel of land for more than 20 years. He therefore wants the court to order that the same be registered in his name. In his supporting affidavit, he claims that he entered into occupation of the said land in 1962 or thereabouts.

Both Respondents are said to have been served with the originating summons but they did not file any replying affidavits. The matter therefore proceeded by way of formal proof. The Plaintiff/Applicant adduced viva voce evidence and stated that he has lived on the said land from 1962 until January 2008 when the Respondents attempted to evict him. After the close of his case, counsel for the plaintiff/Applicant filed a written submission and cited 2 authorities. I have considered them along with the evidence adduced by the plaintiff/Applicant and the law applicable.

Unfortunately for the Plaintiff/Applicant, the law is not on his side. I say so because it is trite law that a claim for adverse possession can only lie against the registered owner of the land in question. According to the Plaintiff/Applicant, he settled on the said land in 1962. The extract of Title annexed to the originating summon however shows that the land in question was registered for the first time in 1998. Time against the registered owner therefore started running in 1998 and not a day earlier. Adverse ownership can only run against a registered owner. This was so held by the Court of *Appeal in the Case of FRANCIS GITONGA MACHARIA –V- MUIRURI Civil Appeal No. 110 /1997.*

In this case therefore, time started running in 1998 and stopped in 2008 when the Plaintiff/Applicant filed this suit. Clearly, 12 years had not elapsed. This suit was filed prematurely and a claim for adverse possession does not therefore lie. In the circumstances, I find that the plaintiff has failed to prove his case against the defendants on a balance of probabilities. The originating summons

is hereby dismissed with no order as to costs.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 4th day of Nov. 2009.

In presence of:- Mr. Muriithi for applicant.



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