**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT** **AT …………**

**E.L.C NO. ……………………..OF 20…….(OS)**

**AB....................................................................................................................................PLAINTIFF**

**VS**

**CD................................................................................................................................ DEFENDANT**

**EF, LAND REGISTRAR……………………………………………………………2ND DEFENDANT**

**ORIGINATING SUMMONS**

*(Under Section 17 & 38 of the Limitations of Actions Act Cap 22 and under Section 7 (d) of the Land Act; Order 37 rule 7 of the Civil Procedure Rules)*

**LET** **CD** of P.O. Box ………, …………. within fifteen (15) days or such other period as the Court may direct after service of this summons on him/her/them enter an appearance to this summons which is issued on the application of **AB** who claims to have become entitled by adverse possession and/or prescriptive rights to the Property registered as…………… registered in the name of **CD**. The said **AB** seeks the **FOLLOWING RELIEFS**:-

1. A declaration that the title of the said 1st Defendant, **CD** to the leasehold interest in land…………………. has been extinguished by the Plaintiff’s adverse possession thereof for a period of more than 12 years in terms of Sections 17 and 38 of the Limitation of Actions Act;
2. A declaration that the Plaintiff has acquired the leasehold interest in land parcel……………………. by his adverse possession thereof for a period of more than 12 years i.e. from 1992 to-date;
3. An Order do issue requiring and directing the Land Registrar, **EF**……….. to register the Plaintiff **AB** as the lessee of land parcel No. …………………in place of the 1st Defendant, **CD** and in place of any other person succeeding the 1st Defendant;
4. The costs of this Suit be borne by the 1st Defendant.

This summons was taken out by **CM ADVOCATES LLP** for the above-named **AB**.

**WHICH SUMMONS IS BASED ON THE GROUNDS,** amongst others, that:-

1. The 1st Defendant sold the suit property to the Plaintiff, **AB** in 1980 at the purchase price of Kshs…………...
2. On taking possession, **AB** developed the land extensively however **CD** refused or failed to transfer the suit property to him whereupon the Plaintiff, **AB** filed suit HCCC No….of 1983 and obtained Judgement against the 1st Defendant for specific performance.
3. An Order authorizing the Deputy Registrar to execute the documents in favour of the Applicant dated ………was never executed and the same became statute barred 12 years after the date of Judgement hence the current application seeking title by adverse possession.
4. A certificate of official search dated …………….. shows the 1st Defendant as the registered owner of the suit property.
5. It is the in the interest of justice that the Orders sought herein be allowed as prayed.

**AND WHICH SUMMONS IS FURTHER** supported by the annexed Affidavit duly sworn by the Plaintiff, **AB** and on such other or further grounds as may be adduced at the hearing hereof.

**DATED** at **NAIROBI** this **……………….**day of **…………………………………………….. 20...**.

**.....................................................................................**

**CM ADVOCATES LLP**

**ADVOCATES FOR THE PLAINTIFF**

**DRAWN & FILED BY:**

**CM ADVOCATES LLP**

I & M BANK HOUSE, 7TH FLOOR

2NDNGONG AVENUE

P.O. BOX 22588-00505

**NAIROBI.**

**EMAIL:** [law@cmadvocates.com](mailto:law@cmadvocates.com)

**TEL:** 0716209673

**TO BE SERVED UPON:**

**THE 1ST DEFENDANT**

ADDRESS

**THE ATTORNEY GENERAL**

ADDRESS

**NOTE:**- *If any of the Defendant(s) does not enter an appearance within the time above-mentioned such order may be made and proceedings taken as the court may think just and expedient***.**

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**E.L.C NO. ……………………..OF 20…….(OS)**

**AB....................................................................................................................................PLAINTIFF**

**VS**

**CD...........................................................................................................................1ST DEFENDANT**

**EF, LAND REGISTRAR……………………………………………………………2ND DEFENDANT**

**SUPPORTING AFFIDAVIT**

**I, AB,** of Post Office Box Number …………….., …………….. and residing in Nairobi hereby solemnly swear and state as follows:-

1. **THAT** I am the Plaintiff herein. I have full knowledge and information concerning this matter and I am competent to swear this Affidavit.
2. **THAT** I have seen, read and have had explained to by my Advocates,……………………and have understood the contents of the Originating Summons filed herewith and do swear this Affidavit in support thereof.
3. **THAT** the property in dispute herein, namely, ………………… (hereinafter “the Suit Property”) is registered in the name of the 1st Defendant. **(*Annexed hereto and marked “AB-1” is a true copy of certified search of records issued by the Lands Registrar on ……..)***
4. **THAT** by an agreement made on ……….., the 1st Defendant sold all that parcel of land known as……………… to me in 1980 at the purchase price of Kshs…………....**(*Annexed hereto and marked “AB-2” is a true copy of the Sale Agreement dated ……..)***
5. **THAT** on taking possession, I developed the land extensively however **CD** refused or failed to transfer the suit property to me whereupon I filed suit HCCC No….of 1983 and obtained Judgement against the 1st Defendant for specific performance. **(*Annexed hereto and marked “AB-3” is a true copy of the Judgment in HCCC No….of 1983 delivered by ….,J)***
6. **THAT** on ………I obtained an Order mandating the Deputy Registrar to execute all documents necessary to effect transfer of the suit land to me. That for some unspecified reason, the Deputy Registrar did not execute the Decree and 12 years lapsed. **(*Annexed hereto and marked “AB-4” is a true copy of the Order directing the DR to execute the documents in favour of the Applicant, dated ………..)***
7. **THAT** the Defendant was aware of the proceedings in HCCC No. …..of 1983 but chose not to perform his obligations as directed by the Court.
8. **THAT** notwithstanding the above, I am in possession until now.
9. **THAT** I acquired the leasehold title by adverse possession.
10. **THAT** It is the in the interest of justice that the Orders sought herein be allowed as prayed.
11. **THAT** I swear this affidavit in support of the Originating Summons herein and pray that the orders sought therein be granted.
12. **THAT** what is deponed to herein is true to the best of my knowledge and belief save as to matters.

**SWORN** by the said **AB** )

at **NAIROBI** this day of 20…. )

**BEFORE ME** )………………………………………

) **DEPONENT**

)

)

**COMMISSIONER FOR OATHS** )

**DRAWN & FILED BY:**

**CM ADVOCATES LLP**

I & M BANK HOUSE, 7TH FLOOR

2NDNGONG AVENUE

P.O. BOX 22588-00505

**NAIROBI.**

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