**Hosea v Njiru and others**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 26 June 1974

**Case Number:** 963/1970 (15/75)

**Before:** Simpson J

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*[1] Limitation of Actions – Land – Adverse possession – Established by payment of purchase price by*

*purchaser in possession. [2] Limitation of Actions – Minority – No extension where right of action accrued first to person not under disability – Limitation of Actions Act* (*Cap.* 22), *s.* 22 (*K*.). *[3] Limitation of Actions – Land – Registered Land – Owner holds in trust for person who has prescribed ownership – Limitation of Actions Act* (*Cap.* 22), *s.* 37 (*K.*). *[4] Land – Registered – Overriding interests – Adverse possession for purpose of prescription an overriding interest. [5] Land – Registered – Prescription – Registered owner holds as trustee for possessor – Limitation of Actions Act* (*Cap.* 22), *s.* 37 (*K.*).

**Editor’s Summary**

The plaintiff claimed to have bought land from the first defendant in 1957 and to have been in occupation of it as owner ever since. The second defendant who was then a minor claimed to have bought the land from the first defendant and to have been registered as its proprietor under the Registered Land Act (Cap. 300) in 1959. The plaintiff prayed for a declaration that he had acquired title to the land by prescription, that the second defendant held the land on trust for him and should transfer it.

**Held –**

(i) on payment of purchase price by a purchaser in occupation his occupation becomes adverse to that

of the vendor (*Bridges v. Mees* (1) followed);

( ii) the plaintiff had been in possession of the land as owner for over twelve years;

(iii) the title to the land was a first registration and could not be rectified;

(iv) the period of limitation was not extended by the minority of the second defendant as the right of

action first accrued to the first defendant who was not under a disability;

(v) on first registration land is subject to prescriptive rights in the process of being acquired;

(vi) at the expiry of the prescription period the registered owner holds the land in trust for the person

who has prescribed ownership.

Declarations and orders accordingly.

**Cases referred to Judgment:**

(1) *Bridges v. Mees*, [1957] Ch. 475; [1957] 2 All E.R. 577.