



**Rayatt & another (The Administrators of the Estate of Jagjit Singh Rayatt alias Jagjit Singh) v The Receiver Manager Athi River Mining Company Limited (Environment & Land Case 48 of 2019) [2023] KEELC 17727 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17727 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 48 OF 2019**

**A NYUKURI, J  
MAY 31, 2023**

**BETWEEN**

**BIMLA VATI RAYATT ..... 1<sup>ST</sup> PLAINTIFF**

**GURDIP SINGH RAYATT ..... 2<sup>ND</sup> PLAINTIFF**

**THE ADMINISTRATORS OF THE ESTATE OF JAGJIT SINGH RAYATT ALIAS  
JAGJIT SINGH**

**AND**

**RECEIVER MANAGER ATHI RIVER MINING COMPANY  
LIMITED ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a plaint dated 6<sup>th</sup> May 2019, the Plaintiff sought as against the Defendant the following orders;
  - a. Permanent injunction restraining the Defendant herein by themselves, their agents and/or servants or any other persons acting for the Defendant or the Defendant's authority from selling, disposing off, alienating or in any way whatsoever interfering with the parcel of land known as LR. No. 347/647 situated at Athi River Township Industrial area, off Namanga Road.
  - b. Costs of this suit plus interest thereon at court rates.
  - c. Any other relief this Honourable Court deems fit and just to grant.
2. The Plaintiff averred that they are beneficial owners of the estate of Jagjit Singh Rayatt alias Jagjit Singh who acquired the suit premises vide a decree issued in the High Court Case Number 256 of 2006 (OS).



They stated that the Plaintiffs' family had been in quiet and peaceable possession of L.R. No. 337/647 Athi River (suit property) since 1952. They stated that the Defendant intend to evict the Plaintiffs and her family from the suit property which is fraudulent and illegal by purporting that they are proprietors of the suit property acquired vide a letter of allotment dated 18<sup>th</sup> January 2010. They also sought that pending determination of this suit an injunction be issued to preserve the suit property.

3. The Defendant was served on 29<sup>th</sup> Mary 2019 but failed to enter appearance or file defence, therefore the suit proceeded to formal proof unopposed.

### **Plaintiffs' Evidence**

4. Bimla Vati Rayatt the 1<sup>st</sup> Plaintiff in this matter testified on 16<sup>th</sup> January 2023 as PW1. She adopted her witness statement dated 1<sup>st</sup> December 2018 as her evidence in chief and produced documents attached to her list of documents dated 6<sup>th</sup> may 2019 as P-Exhibits 1 to 7. She stated that she had been on LR. No. 337/647 Athi River since 1952. It was her testimony that she was the wife of Jagjit Singh Rayatt alias Jagjit Singh who was a proprietor of business known as Bir Singh and Company Limited, who are the proprietors of the suit property and which was transferred to her by her family.
5. It was PW1's evidence that their family had been in quiet and peaceful possession of the suit property since 1952 and that the property had been acquired by the late Jagjit Singh Rayatt (hereinafter referred to as Jagjit) by a decree in High Court Civil Case Number 256 of 2006 (OS). She maintained that she has been paying all the rates in respect of the suit property to the County Council of Athi River.
6. The witness complained that the Defendant has visited the suit premises and threatened to evict the Plaintiffs' family from the suit property purporting that they were the owners of the suit property by providing a letter of allotment dated 18<sup>th</sup> January 2010. She produced a decree issued in Nairobi High Court Civil Case No. 256 of 2006 (OS), temporary land orders issued in 1952 to Bir Singh & Co. Limited dated 19<sup>th</sup> January 1952, letter from Land Officer allocating the land to Bir Singh & Co. Ltd on 10<sup>th</sup> September 1952, a demand for land rent from 1963 to 1972, a receipt for payment to Mavoko Water and Sewerage Co. Ltd dated 10<sup>th</sup> June 2011; and Limited grant ad litem issued on 9<sup>th</sup> December 2018.
7. The Plaintiffs filed submissions dated 15<sup>th</sup> February 2023 in support of her case.

### **Submissions**

8. Counsel for the Plaintiff regurgitated the pleadings and the Plaintiffs testimony and submitted that although the Plaintiff's have been in continuous occupation of the suit property since 1952, they have been threatened with eviction by the Defendant and that if the prayers sought are not granted, the estate will suffer irreparable loss despite the fact that the deceased's family have been in occupation since 1952.

### **Analysis and Determination**

9. I have carefully considered the pleadings, evidence and submissions and in my considered view, the issue that arise for determination is whether the Plaintiffs have proved entitlement to the suit property.
10. The basis of the Plaintiffs' claim is a decree made on 11<sup>th</sup> June 2013 and issued on 17<sup>th</sup> July 2013 in Nairobi High Court Civil Case No. 256 of 2006 (OS) between *Bir Singh & Co. v. J.K.M Industrial & Commercial Investment Limited*. In that decree, the High Court declared that the Plaintiff therein was entitled to the suit property by way of adverse possession for having been in occupation thereof for more than 12 years. The court also ordered that the suit property be registered in the name of the



Plaintiff in that suit and that the name of J.K.M Industrial & Commercial Investment Limited be deleted from the register.

11. In paragraph 4 of the plaint herein, the Plaintiff pleaded that her family has had quiet and peaceful possession of the suit property since 1952.
12. Having considered the decree in High Court Civil Case No. 256 of 2006 (OS), I note that the person or entity that was declared to have been in possession of the suit property was Bir Singh & Company. While the Plaintiff testified that Jagjit was the proprietor of a business called Bir Singh and Company Limited, no evidence was produced to demonstrate that allegation. In any event, even if that were the position, no evidence was shown to show whether Bir Singh and Company was a legal person and or the nature of that entity whether it was limited company, a business name or any other entity. Besides, if that entity known as Bir Singh & Co. was in exclusive possession of the suit property from 1952 up to when the declaration was made by the court in 2013 by adverse possession, then no other person could be in adverse possession of the same property as an adverse possessor is a person who has been in an exclusive, open, notorious possession of land for more than 12 years.
13. The Plaintiff alleges that the property was transferred to her and her family by Bir Singh & Co. Limited. If that was the case then nothing stops Bir Singh & Co. Ltd from effecting the transfer. The pleadings and evidence are not clear whether the Plaintiff is making a claim for adverse possession or intends to implement the decision in Nairobi High Court Civil Case Number 256 of 2006 (OS). My view is that if the claim is for adverse possession, then that claim could not have run parallel to the claim by the entity called Bir Singh & Co. and therefore could not have run before 2013 when the decree was issued in HCC No. 256 of 2006. If it ran after the decree, the statutory period of 12 years had not elapsed to confer rights to land under adverse possession as this suit was filed in 2019, only six years after the decree in HCC No. 256 of 2006 (OS) was issued.
14. If the suit intends to implement the decree in HCC No. 256 of 2006 (OS), then the right procedure would be to execute that decree and not file a fresh suit, which is this suit.
15. It is therefore my finding that as the decree in Nairobi HCC No. 256 of 2006 (OS) was in favour for Bir Singh and Company, the Plaintiffs herein having failed to demonstrate that they are one and the same person as the Plaintiff in that suit, they have not proved their legal entitlement to the suit property.
16. In the premises, the Plaintiffs have failed to persuade this court that they have a legal right in respect of the suit property capable of being protected under the law and therefore this suit lacks merit and the same is dismissed. As the defence did not participate in these proceedings, there is no order as to costs.
17. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 31<sup>ST</sup> DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the Presence of;**

Ms Shabana for Plaintiffs

No appearance for Defendant

Josephine – Court Assistant

