



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**ORIGINATING SUMMONS NO 84 OF 2010**

**JULIA KINANU MIRITI .....PLAINTIFF**

**VERSUS**

**NICODEMUS M'INOTI M'ITWARUCHIU .....DEFENDANT**

**J U D G M E N T**

1. This suit was filed by way of Originating Summons by the Plaintiff on 21st June, 2010. The Originating Summons is brought under order XXXVI Rule 2D of the defunct Civil Procedure Rules and Section 38 of the Limitation of Actions Act. It states:-

*LET NICODEMUS M'INOTI M'ITURUCHIU of Ntumburi location, Imenti Central District within 15 days from the date of service of summons inclusive of the date of such service enter an appearance to the application by JULIA KINANU MIRITI of P.O Box 2018-60200, Meru who claims and asserts to acquire a portion to the title to the land parcel L.R NO. KIBIRICHIA/NTUMBURI/408 by virtue of doctrine of adverse possession for the following reliefs:-*

- 1. A declaration that the applicant has been in adverse possession of land parcel No. L.R KIBIRICHIA/NTUMBURI/408 for a period of more than 12 years since she was born and in occupation since birth in 1966 to date thus she is legally entitled to be registered as the co-proprietor thereof as she has nowhere else to go to.**
- 2. That the Court be pleased to order that status quo be maintained on parcel of land L. R. NO KIBIRICHIA/NTUMBURI/408 and the defendant ordered to stop harassing, and insulting and for evicting the Plaintiff until further orders of this Court.**
- 3. Costs of this summons and interest provided for (sic).**

2. The application is supported by the affidavit of JULIA KINANU MIRITI, the Plaintiff and has the following grounds:-

- a. The Applicant/ Plaintiff has been in actual occupation for more than 12 years since her birth in 1966 to date and lives with her family on the suit land.**
- b. The Applicant/plaintiff and the family have lived and depended on this suit land for all their lives and have developed the same without any hindrance until now that the Respondent/Defendant wants to forcefully evict her and her entire family.**

3. The Plaintiff gave oral evidence in support of her claim. 2 witnesses also gave evidence on her behalf.

4. The defendant gave oral evidence in support of his case. He did not have a witness.

5. During his evidence in Chief the Defendant said that he deemed the plaintiff as his child. He however indicated that he had no land to give her. He urged the Court to dismiss the defendant's suit as it had not achieved the threshold required to satisfy an order for ownership by adverse position.

6. The Plaintiff told the Court that she was occupying a space which was 50 feet by 100 feet in size.

7. At the close of the case the parties indicated to Court that they had agreed to resolve this matter in terms of the following consent :-

**“THE DEFENDANT AGREES AS HEREUNDER:-**

***1. To give the Plaintiff a portion of land measuring 50ftX100ft within land parcel No. KIBIRICHIA/NTUMBURI/1625.***

***2. The Defendant further offers to relocate the Plaintiff to the new site and have her removed from the current spot in parcel No. KIBIRICHIA/NTUMBURI/1620”.***

8. I adopt the Consent and Issue the following orders:-

- 1. The defendant to give to the Plaintiff a portion of land Measuring 50 feet by 100 feet within Land Parcel NO. KIBIRICHIA/NTUMBURI/1625.***
- 2. The defendant to relocate the Plaintiff to the new site and have her removed from Land Parcel NO. KIBIRICHIA /NTUMBURI/1620.***
- 3. Plaintiff to move to Land Parcel No. KIBIRICHIA/NTUMBURI/1625 upon relocation by the Defendant and to meet the Survey, transfer, and other costs incidental to the portion of land measuring 50 feet by 100 feet being transferred to her.***

9. The parties in this suit being close family members, I will grant no orders as to costs. The parties will bear own costs.

It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF APRIL, 2016 IN THE PRESENCE OF:-**

CC: Daniel /Lilian

Julia Kinanu Miriti -Plaintiff

Gichunge for the Defendant

.....

**P. M. NJOROGE**

**JUDGE**