



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC ORIGINATING SUMMONS NO. 30 OF 2019

CLAIM FOR LAND BY WAY OF ADVERSE POSSESSION

OVER 1.90 ACRES IN TITLE NUMBER IGOJI/GUKIU/1087

BETWEEN

AMBROSE KIRIMI.....PLAINTIFF

VERSUS

EMILIO MARANGU

(Being sued as the administrator of the estate of ARIBU BOLWA (Deceased)....1ST DEFENDANT

EMILIO MARANGU.....2ND DEFENDANT

JANE KAREGA FABIA.....3RD DEFENDANT

DAVID KIRIMI KABURU.....4TH DEFENDANT

RAPHAEL KABURU.....5TH DEFENDANT

THOMAS KARANI M'ARIBU.....6TH DEFENDANT

JUDGMENT

1. The plaintiff took out an originating summons dated 14.6.2019 under **Sections 7 and 38 of the Limitations of ActionS Act, Order 37 Rule 7 Civil Procedure Rules, Section 7 (d) of the Land Act, Sections 28 and 107 of the Land Registration Act** seeking for the following declarations:-

1) He be declared to have acquired by way of adverse possession L.R No. Igoji/Gikui/1087 (a portion measuring approximately 1.90 acres) which he has continuously occupied since August, 2006.

2) The District Land Registrar to be ordered to register and enter his name as the registered proprietor of the portion once hived from L.R Igoji/Gikui/1087 and a certificate of title to issue.

2. In his testimony in court, PW1 adopted his sworn affidavit of 14.6.2019 and produced annextures thereto in support of his claim.

3. He produced a copy of an official search dated 21.3.2019 for Parcel No. Igoji/Gikui/1087 bearing the names of Aribu Bolwa as the registered owner as P exh I.

4. Secondly, the plaintiff produced a sale agreement dated 1.6.2006 entered between Fabian Riungu Agostino and himself where he bought the suit land for Kshs. 100,000/= as per P exh 2.

5. Thirdly, PW1 produced acknowledgment receipts dated 5.6.2006, 31.1.2007 and 7.3.2008 as P exh 3, 4 and 5 respectively.

6. Fourthly, he produced a chief's letter dated 12.4.2019 and lastly a copy of a gazette notice No. 3731 dated 22.5.2015 as P exh 6 & 7 respectively.

7. Further PW1 stated upon clearing the entire purchase price he fenced off his portion after Kamuge surveyor consolidated the portion and that his occupation has been peaceful, open, uninterrupted and without interference by the defendants since 2006.

8. Additionally, the plaintiff testified the defendants petitioned for a grant of letters of administration in **Meru High Court Succession Case No. 200 of 2018** where the 2nd defendant was the administrator.

9. He urged the court to find that the occupation of over 12 years entitled him to the prayers sought.

10. P Exh No. I indicates **L.R Igoji/Gikui.1087** was in the name of Aribu Bolwa and measured 1.1 Ha. Whereas the sale agreement was between Fabian Riungu Agostino and the plaintiff. The settler was the registered owner nor is he one of the defendants in this suit though it is alleged to be represented by the 3rd defendant.

11. It is alleged the defendants however acknowledged receipt of the purchase price as indicated in P exh 3, 4 and 5 hence were all aware of the transactions.

12. The area chief also acknowledged the transactions through P exh 6.

13. For a claim of adverse possession to be founded, the possession of the land must be actual, open, continuous and exclusive for a prescribed period of 12 years which must be uninterrupted and peaceful as held in **Chevron (K) Ltd –vs- Harrison Charo Wa Shutu [2016] eKLR and Gabriel Mbui –vs- Mukindia Maranya [1993] eKLR.**

14. The plaintiff avers he entered the suit land with effect from 1.6.2006 after he purchased the land from the defendants as sons of the deceased registered owner who appears to have died on 12.5.1982 as indicated in P exh "7". Consequently the plaintiff did not enter the land with the consent of the registered owner of the land.

15. As at the time of the alleged sale occurred, the defendants did not have requisite capacity to undertake the sale.

16. Be that as it may, the defendants have not denied the plaintiff has been in possession of the suit land. Under **Section 16 of the Limitation of Actions Act**, a claim can be founded if there was no interval of time between the death of the deceased person and the grant of letters of administration.

17. The plaintiff testified he entered into the land in 2006. This means his entry and occupation thereafter was inconsistent with and wholly adverse to the rights of the estate of the deceased, his heirs and all those claiming under the estate.

18. The 2nd defendant is said to have applied for the letters of administration in 2014. See **Mate Gitabi –vs- Jane Kaburu Muga & 3 Others Nyeri Court of Appeal Civil Case No. 43 of 2015, Peter Mbiri Michuki –vs- Samuel Mugo Michuki Court of Appeal Nyeri Civil Appeal No. 22 of 2013).**

19. In my view therefore, the rights of the plaintiff accrues as against the defendants who are said to be the beneficial owners of the estate of the deceased as held in **Karuntimi Raiji –vs- M'makinya M 'itunga [2013] eKLR.**

20. In view of the foregoing, I am inclined to find the plaintiff has proved his claim on a balance of probabilities. I grant the following orders:-

1) A declaration is hereby made that the plaintiff has acquired ownership of L.R Igoji/Gikui/1087 to the extent of portion measuring 1.90 acres through adverse possession.

2) An order is hereby issued for the plaintiff to be registered as the sole proprietor of a portion measuring 1.90 acres.

3) The legal representative of the estate of Fabian Riungu Agostino or the Deputy Registrar of the court is hereby authorized to sign all requisite documents to facilitate the aforesaid registration.

4) The consent of the land control board is hereby dispensed with in this implementation of this judgment.

21. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26TH DAY OF JANUARY, 2022

In presence of:

No appearance for parties

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE