



**REPUBLIC OF KENYA**

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

**LAND CASE NO. E3 OF 2020 (O.S.)**

**PETER WACHIRA KABANGO ..... PLAINTIFF**

**VERSUS**

**WILSON KIMALEL ARAP NGENO..... DEFENDANT**

**JUDGMENT**

1. In his Originating Summons dated **30/10/2020** and filed on **11/11/2020** the plaintiff seeks the following orders:

**1. That he be declared the owner of three (3) acres of land in Dundori/Mugwathi Block 2/256 by adverse possession having occupied, cultivated and tilled the said three (3) acres of land continuously and uninterrupted for over 41 years since 1979 and that this Honourable Court do direct that the Nakuru Land Registrar do rectify the Land Register accordingly and register him as the sole proprietor of three (3) acres of land, and that he be issued with a Title Deed for the said three (3) acres.**

**2. That the restriction registered on 22<sup>nd</sup> August 2001 be lifted as the Land Disputes Tribunals were abolished.**

**3. That the costs of this suit be borne by the Defendant who has occasioned this action.**

2. The plaintiff was apparently unable to trace the defendant for service of process and he served him by way of substituted service on **18/6/2021** after securing leave of court on **21/5/2021**. An affidavit of service was filed on **10/9/2021** attaching the press advertisement evidencing service. Nevertheless, the defendant did not file any memorandum of appearance or defence and the suit proceeded to an *ex parte* hearing on **9/1/2021** pursuant to directions issued at a mention on **5/10/2021**.

3. Only the plaintiff and one of his witnesses testified at the hearing. The evidence of the plaintiff is that he began living on the suit land in **1979** and has remained in possession thereof for about **42** years since without any interruption by anyone including the defendant who is the registered owner. Evidence of the plaintiff's developments on the suit land, including photographs, was also produced, as was an extract of title in proof of the registration of the suit land in the defendant's name.

4. According to the plaintiff the land had been purchased by his brother (**PW2**) who placed him in possession thereof while the whole block had not been subdivided. After the whole block was subdivided **plot no 256** was created though title was not issued in the name of **PW2** but in the name of the defendant. **PW2** only discovered later on an unstated date that the defendant had collected the title to the suit land. **PW2** on his part corroborated the evidence of **PW1** and stated that he had assisted him settle on the suit land. It also transpired that a dispute had been registered with the Bahati Land Disputes Tribunal but the case had stalled. Thereafter after discovering that the land title had been issued in the name of the defendant **PW2** lodged a caution over it and the Registrar has never summoned **PW2** over the said caution at the instance of any person hence the caution is still in place.

5. I have wholistically considered the evidence of the plaintiff and his witness and I find that he has established his claim in adverse possession on a balance of probabilities and I enter judgment in his favour against the defendant and I issue the following final orders:

**a. A declaration is hereby issued declaring that the plaintiff is entitled to be registered by way of prescription as proprietor of the three (3) acres of land comprised in Dundori/Mugwathi Block 2/256 having occupied, cultivated and tilled the said three (3) acres of land continuously and uninterrupted for a period in excess of twelve (12) years.**

**b. The Land Registrar, Nakuru, shall remove or cancel the restriction registered on 22/8/2001 against the title to Dundori/Mugwathi Block 2/256 forthwith.**

**c. The registration of title to Dundori/Mugwathi Block 2/256 in the name of Wilson Kimalel Arap Ngeno shall be cancelled and the Land Registrar shall issue title in the name of the plaintiff, Peter Wachira Kabango.**

**d. Each party shall bear their own costs of the suit.**

It is so ordered.

**DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 17TH DAY OF JANUARY, 2022.**

**MWANGI NJOROGI**

