



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

ENVIRONMENT AND LAND CASE NO. 91 OF 2011

M'MUTHAURA M'MIKUA.....PLAINTIFF

VERSUS

NYAMBURA CHEGE.....DEFENDANT

J U D G M E N T

1. The Plaintiff in his Originating Summons dated 4th July, 2011 states that he has come to Court under Section 38 of the Limitation of Actions Act (Cap 22), Order 37 Rule 7 of the Civil Procedure Rules 2010 and all other enabling provisions of the law.

2. The Originating Summons reads:-

“LET NYAMBURA CHEGE, the Respondent of NGUSHISHI SETTLEMENT SCHEME within (15) days after service of this summons, inclusive of the day of such service, enter appearance to this summons which is issued on the application of M'MUTHAURA M'MIKUA of MERU county who prays that the Honourable Court for (sic) determination of the following questions and orders:-

1. Whether the respondent is the registered proprietor of all that parcel of Land known as NGUSHISHI SETTLEMENT SCHEME/527 measuring approximately 1.8 Hectares of thereabouts.

2. Whether the applicant has been in occupation of the said land openly, continuously, uninterruptedly and adversely to the respondent's Title for a period in excess of 12 years.

3. Whether the respondent's title to land parcel No. NGUSHISHI SETTLEMENT SCHEME/527 measuring approximately 1.8 Hectares or thereabouts has been extinguished by dint of section 38 of the Limitation of Actions Cap. 22 Laws of Kenya.

5. Whether the applicant has now acquired absolute ownership of land parcel No. NGUSHISHI SETTLEMENT SCHEME/ 527 by way of adverse possession.

6. Whether the applicant is now entitled to be registered as the proprietor of land reference No. NGUSHISHI SETTLEMENT SCHEME/ 527.

6. An order that the applicant be registered as the proprietor of land reference No. NGUSHISHI SETTLEMENT SCHEME/ 527.

7. Whether the applicant is entitled to the cost of this suit.

WHICH APPLICATION is supported by the annexed affidavit of M'MUTHAURA M'MIKUA, the applicant herein, the nature of this case and other reasons to be adduced at the hearing hereof.

3. The Plaintiff was allowed by the Court to effect service upon the Defendant by way of substituted service. This was done vide the edition of the DAILY NATION dated 26th March, 2012 at page 41.

4. An interlocutory judgment was entered on 25th November, 2012.

5. Formal proof proceedings took place on 8th December, 2016.

6. The Plaintiff told the Court that he would want the Court to adopt his witness statement dated 7th July, 2012 as his evidence in this suit.

7. In his witness statement the Plaintiff says that Land Reference NO. NGUSHISHI SETTLEMENT SCHEME/ 527 measuring approximately 1.8 Hectares is registered in name of the defendant.

8. He goes on to say that he has lived on the suitland for over 30 years since 1982. He says that he has been in occupation all this time and has extensively developed it . He further avers that the Defendant has never visited the land.

9. The Plaintiff says that his occupation of the land has been open, continuous and adverse to the defendant's title for a period exceeding 30 years. He says that he has acquired absolute ownership of Land Parcel No. NGUSHISHI SETTLEMENT SCHEME/527 by way of adverse position.

10. The Plaintiff tells the Court that he had tried to contact or serve the Defendant with Court pleadings unsuccessfully. He further tells the Court that on 20th March, 2012 he was granted leave by the Court to serve the defendant by way of substituted service which he did through the Daily Nation Newspaper on 26th March, 2012. He says that even after being served by way of substituted service, the defendant failed to enter appearance or to file any response.

11. The Plaintiff produced a copy of the green card showing that the suit land was registered in the name of the defendant. He also produced a copy of the page of the Daily Nation Newspaper of 26th March, 2012 which effected the apposite substituted service.

12. The Plaintiff asked the Court to find that he had acquired Land Parcel No. NGUSHISHI SETTLEMENT SCHEME/ 527 by way of adverse position.

13. The questions framed by the Originating Summons are answered as follows:-

1. Land Parcel No. NGUSHISHI SETTLEMENT SCHEME /527 measuring approximately 1.8 Hectares is registered in the name of Defendant.

2. Without the participation of the Defendant in these proceedings, the Plaintiff's claim that he has been in occupation of the suit land openly, continuously, uninterruptedly and adversely to the Respondent's title in excess of over 12 years is uncontroverted.

3. Without the participation of the defendant, the Plaintiff's claim that title to Land Parcel No. NGUSHISHI SETTLEMENT SCHEME/ 527 has been extinguished by dint of Section 38 of the Limitation of Actions Act is uncontroverted.

4. Without the participation of the defendant, the claim, that the Plaintiff has acquired absolute ownership of land Parcel NO. NGUSHISHI SETTLEMENT/527 by way of adverse possession is uncontroverted.

5. Without the participation of the defendant, the claim that the plaintiff is entitled to be registered as the proprietor of Land Parcel No. NGUSHISHI SETTLEMENT SCHEME/ 527 is controverted.

6. From the foregoing an order that the Plaintiff be registered as the proprietor of Land Parcel No NGUSHISHI SETTLEMENT SCHEME /527 is tenable.

7. The Defendant having not participated in these proceedings whatsoever, the Plaintiff is NOT entitled to costs.

14. In the circumstances, It is ordered that the Plaintiff M' MUTHAURA M'MIKUA be registered as the proprietor of Parcel No. NGUSHISHI SETTLEMENT SCHEME/527 having acquired it by way of adverse possession.

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

CA: Daniel

Rimita for the Plaintiff

P.M. NJOROGI

JUDGE