



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC NO. 12 OF 2020

JERUSHA MUTHONI MWANGI.....PLAINTIFF

VERSUS

BEDAN IKUA KAMAU.....1ST DEFENDANT

JOSEPH NJUGUNA KAMAU.....2ND DEFENDANT

RULING

1. By a plaint dated 19th May, 2020, the Plaintiff sought the following reliefs against the Defendants:

(a) A declaration that the Plaintiff is the rightful and beneficial owner of the suit land by virtue of adverse possession.

(b) An order of permanent injunction restraining the Defendants herein whether by himself, his agents, servants from invading, trespassing, transferring, cultivating or interfering with the Plaintiff's quiet possession and use of Parcel Nyandarua/Kipipiri/Lereshwa/Block 1 (Malewa Ranch) 643.

(c) An order to the Land Registrar Nyahururu for cancellation of title issued to the Defendants herein and registration of the Plaintiff as the proprietor of the land.

(d) Costs of this suit.

(e) Any other or further relief that the honourable court may deem fit to grant.

2. The basis of the Plaintiff's claim was that she had been occupying and cultivating the suit property since 1977 and that she had been in open, quiet and peaceful occupation thereof for a period exceeding 12 years without interruption from the Defendants.

3. The Defendants filed a statement of defence dated 25th June, 2020 denying the Plaintiff's claim in its entirety. It was denied that the Plaintiff had been in open, quiet and peaceful occupation of the suit property since 1977 or at all and put the Plaintiff to strict proof thereof. The Defendants further pleaded that the Plaintiff's rightful parcel of land was **Plot No. 597** and not the suit property.

4. By a notice of preliminary objection dated 22nd October, 2021, the Defendants objected to the Plaintiff's suit on the following grounds:

(a) That the suit property is located in Malewa within the territorial jurisdiction of the Engineer Law Courts and its value is well within the pecuniary jurisdiction of that honourable court.

(b) That therefore the honourable court lacks the territorial jurisdiction to entertain this suit and the Plaintiff is thus forum shopping.

(c) That the suit is frivolous, scandalous and an abuse of the court process for an attempt by the Plaintiff to create non-existent property rights.

(d) That the Plaintiff's suit should therefore be dismissed with costs to the Defendants.

5. In response to the preliminary objection, the Plaintiff filed a replying affidavit sworn on 11th November, 2021. She contended that although the value of the suit property fell within the pecuniary jurisdiction of the subordinate courts, her claim was based upon adverse possession hence it could not be adjudicated before the Magistrate's courts. It was her contention that a claim for adverse possession under

Section 38 of the Limitation of Actions Act could only be filed before the superior courts for adjudication. She, therefore, urged the court to dismiss the preliminary objection with costs.

6. When the matter came up for directions on 18th November, 2021, the parties opted to rely entirely upon their documents on record without filing any submissions. The court has noted that although the Defendants listed 4 points of preliminary objection in their notice, the only objection which raises a pure point of law for determination as a preliminary objection is the one on the jurisdiction of the court to entertain the suit. See **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA. 696**. The issue of whether or not a suit is frivolous, scandalous, or an abuse of the court process cannot be properly canvassed as a preliminary objection.

7. It is apparent from the material on record that the Plaintiff's suit is essentially grounded upon adverse possession under the **Limitation of Actions Act (Cap. 22)**. It is also evident from a reading of **Section 38** of the said **Act** that the court which is competent to handle such claims is the **High Court**. However, by virtue of **Article 162 (2) of the Constitution of Kenya, 2010 and Section 13 of the Environment and Court Act, 2011**, the court which is competent to handle such claims under the current legal regime is the **Environment and Land Court**.

8. The mere fact that the value of the suit property may fall within the pecuniary jurisdiction of the subordinate court is immaterial for purposes of **section 38 of the Limitation of Actions Act**. The fact that the Plaintiff's claim for adverse possession is disputed and contested cannot shift the forum of adjudication to the subordinate court within whose local jurisdiction the suit property is located.

9. The court is thus not satisfied that there is merit in the Defendants' preliminary objection to the suit. Accordingly, the Defendants' notice of preliminary objection dated 22nd October, 2021 is hereby overruled with costs to the Plaintiff. It is so ordered.

Ruling dated and signed at Nyahururu and delivered via Microsoft Teams platform this 17th day of February, 2021.

In the presence of:

Ms. Cherono for the Plaintiff

Ms. Muthoni Mwangi holding brief for Ms. Nyawira Mureithi for the Defendants

CA- Carol

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Y. M. ANGIMA

ELC JUDGE