



REPUBLIC OF ENYA

IN THE ENVIROMENT AND LAND COURT AT MAKUENI

CIVIL SUIT NO EOO2 OF 2021

JACKSON MUTUKU KIVUNGI.....PLAINTIFF

VERSUS

FRANCIS NDAVI WAEMA.....DEFENDANT

RULING

1. By an originating summons dated 29th of April 2021 brought under Section 7, 17 and 38 of the Limitation of Actions Act Cap 22 laws of Kenya, Order 37 Rule 3 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the law, the Applicant is seeking for the following orders against the Respondent: -

a) A declaration that the portion measuring 15 by 100ft of land parcel number Makueni/Kisekini/3065 has been extinguished by the Plaintiff adverse possession thereof for a period of more that twelve (12) years in terms of the limitation of Actions Act.

b) The Plaintiff has become entitled by adverse possession to the entire portion measuring 15 by 100 feet comprised in land parcel number Makueni/Kisekini/3065 within Makueni County and registered under the Land Registration Act in the name of Francis Ndavi Waema.

c) An order that the District Land Registrar Makueni to register the Plaintiff as the absolute proprietor of the land portion measuring 15 by 100 feet comprised in title number Makueni/Kisekini/3065 in place of the Defendant.

d) That the District Land Registrar Makueni be directed that the order herein shall be an instrument of transfer of ownership of the land portion measuring 15 by 100 feet comprised in title number Makueni/Kisekini/3065 to the Plaintiff.

e) That the cost of this suit be provided for.

2. The Summons was premised on the grounds on the face of the application and on the supporting affidavit of the Applicant sworn on 29th of April 2021.

3. In opposing the Originating summons, the Defendant/Respondent filed a replying affidavit sworn on 16th of June 2021.

4. The Defendant took the hearing date for the Originating Summons and served it upon the Plaintiff/Applicant. On the date of the hearing, neither the Plaintiff/Applicant nor his Counsel were present despite being duly served.

5. Mr. Tamata Counsel for the Defendant/Respondent urged the court to dismiss the application for want of prosecution and non-attendance.

6. Order 12 Rule 3(1) of the Civil Procedure Rules which governs dismissal of suits for non-attendance provides as follows: -

(1) "If on the date fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded in court".

7. Upon perusal of the court record, it is evident that the Plaintiff/Applicant was served with the Hearing Notice dated 11th of November 2021. The Hearing Notice has a "received stamp" from the firm of Maingi Kamau & Co Advocates indicating that service was effected on 23rd of November 2021. This was further confirmed by the affidavit of service by Catherine Mwikali a licenced process server sworn on 21st of December 2021.

8. It is also evident that the Plaintiff/Applicant has not taken any step to prosecute this matter. It is clear that Order 12 Rule 3 allows the court

to dismiss a suit for non-attendance.

9. In light of the foregoing, the application dated 29th of April 2021 is dismissed with costs for non-attendance.

RULING SIGNED, DATED AND DELIVERED THIS 16TH DAY OF FEBRUARY, 2022.

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HON. T. MURIGI

JUDGE

IN THE PRESENCE OF:-

KIUTHUKA HOLDING BRIEF FOR KAMOLO FOR THE RESPONDENT

KWEMBOI- COURT ASSISTANT