



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 526 of 2012

**IN THE MATTER OF SECTION 37 AND 38 OF THE LIMITATION ACTIONS ACT CAP 22 OF
THE LAWS OF KENYA**

AND

IN THE MATTER OF PARCEL NO. NGUIRUBI/NDIUNI/1401 KIAMBU COUNTY

BETWEEN

THE FAMILY OF THE LATE MR. KARANJA THUKU

MARTHA NJERI KARANJA.....APPLICANTS

-VERSUS-

MR. SOLOMON MUKUNDI GICHINGA.....RESPONDENT

JUDGMENT

The family of Karanja Thuku filed this Originating Summons (OS) dated 17th August 2012 pursuant to the provisions of Sections 37 and 38 of the Limitation of Actions Act, Cap 22 laws of Kenya against the Respondent, Solomon Mukundi Gichinga seeking orders that they had acquired ownership and title over land parcel known as NGUIRUBI/NDIUNI/1401 registered in the name of SOLOMON MUKUNDI GICHINGA by adverse possession and sought an order that Martha Njeri Karanja, (wife of Karanja Thuku) be registered as the owner in place of the Respondent, the applicant, Martha Njeri Karanja filed a Notice of Motion on 28th August 2012 where she sought to be granted leave to serve the Originating Summons (OS) by way of substituted service because she did not know when to find the respondent to be able to serve him personally.

The Motion came for hearing before Hon. Justice Kimondo on 28th September 2012 where the granted leave to the applicant to effect service of the Originating Summons by substituted means by one advertisement in the Standard Newspaper on any week day. The Originating Summons was duly served as per the order of the court and the Originating Summons was fixed for directions on 26th November 2012 when the matter was listed before me.

The respondent despite having been served with the Originating Summons did not enter appearance and I directed that the Originating Summons do proceed to be heard by way of viva voce evidence and directed that the hearing do proceed on 5th February 2013 before any ELC Judge and that the Respondent be served with a hearing notice by way of a single advert in the Daily Nation or Standard Newspaper

published at least 14 days before the hearing date.

The Originating Summons was again listed for hearing before me on 5th February 2013 when the applicant appeared and there was no appearance by the Respondent though service was effected in accordance with the court's order of 26th November 2013. The court was not able to hear the matter owing to the workload on that day and I rescheduled the hearing of the Originating Summons to 22nd February 2013 and dispensed with service of the hearing notice on the Respondent who had failed to appear or file any response.

The Applicant Martha Njeri Karanja appeared before me and testified in support of the Originating Summons. Briefly the applicant testified that her and her family, who included her husband Karanja Thuku who is now deceased, was among several landless persons who were settled on plots in the Ndeiya area of Kiambu County and that her family settled in plot No. Nguirubi/Ndiuni/1401 in 1992 and that at the time they settled there the plot was vacant. The Applicant stated that upon entering the plot they started developing the plot and they have constructed 3 dwelling houses (homes) for herself and her late husband and for her 2 sons. They have planted trees and brought piped water onto the plot. The applicant further testified ever since they occupied the plot no person has come up to claim the plot and that she does not know Solomon Mukundi Gichinga who is shown to be the registered owner of the plot at the Lands office and only came to know the land was registered in the Respondent's name when she sought to obtain a search after the death of her husband. Indeed the family buried her husband in this same plot when he died in 2009.

The Applicant claims that by reason of the long and uninterrupted possession without any interference from any person she has become entitled to be registered as owner by virtue of adverse possession. The registered owner is unknown to the applicant and has not during their period of occupancy and possession visited the land. The applicants have exercised rights and have acted as the owners of the subject land and their actions and activities are inconsistent of the acts of the owner and have been adverse to the rights and interest of the owner.

The court in the circumstances holds and finds that the Applicants have been in continuous and uninterrupted possession of the suit land since 1992 when they took possession such that even by 2nd April 1996 when the respondent was registered as the owner the Applicant's were in adverse possession of the suit property. It is instructive that even as per the bundle of correspondence tendered by the Applicant in evidence the county council of Kiambu has been corresponding with Karanja Thuku, the applicants deceased husband in regard to boundary dispute respecting title Number Nguirubi/Ndiuni/1401 in relation to the neighbouring parcels of land and the Respondent's name appears nowhere in all the correspondences.

On the basis of the uncontroverted evidence by the applicant the court is satisfied that the applicant has proved her case on a balance of probabilities and enters judgment in favour of the applicant on the following terms.

- (i) That Martha Njeri Karanja is declared to have acquired title to land parcel number Nguirubi/Ndiuni/1401 by virtue of adverse possession for a period of more than 12 years.
- (ii) That the Land Registrar Kiambu Lands Office be and is hereby directed to cancel the registration of Solomon Mukundi Gichinga as the owner of Title No. Nguirubi/Ndiuni/1401 and in place thereof to register Martha Njeri Karanja as owner thereof.
- (iii) That there be no orders as to costs for this suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the Plaintiffs
..... for the Defendant