



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL SUIT 1412 OF 2005**

**DAVID CHEGE.....APPLICANT**

**VERSUS**

**GRACE WANGECHI NYAMWERU & ANOTHER.....RESPONDENTS**

**JUDGMENT**

**DAVID CHEGE**, (applicant) instituted this suit by way of an originating summons on 25<sup>th</sup> November, 2005. This suit is against **GRACE WANGECHI NYAMWERU**, (the 1<sup>st</sup> respondent) and **NYONIA GIAKWA HOLDINGS LIMITED**, (the 2<sup>nd</sup> respondent).

The applicant is seeking for the following orders:

1. *That the applicant be declared to have become the legal owner entitled by adverse possession of over twelve [12] years since 1985 of all those parcels of land to wit: plot numbers 130 and 137 being part of all that formerly known as LR NO. 8469/4 and of title no LR NO. 36766 situated at Kasarani, Hunter Estate.*
2. *That the said applicant be registered as the sole proprietor of the above said parcels of land in place of the respondents in whose favour the said parcels of land is registered.*
3. *That the respondents who presently have title to the land do survey the land wherein the said plots are comprised and excise plot numbers 130 and 137 measuring approximately 60 by 40 feet from the said land formerly known as LR NO 8469/4 of Title number LR 36766 at the applicant's expense.*
4. *That the respondents who presently have title to the said land do execute a transfer of the suit land in favour of the applicant, and in default, the Deputy Registrar of this Court do execute the same.*
5. *Costs of this suit be paid by the respondents.*

This application is supported by a lengthy affidavit by the applicant which was sworn on 3<sup>rd</sup> November, 2005. The applicant has given a detailed chronology of how he occupied the suit premises in 1985 on the invitation of the 1<sup>st</sup> respondent who had purchased the plots from the 2<sup>nd</sup> respondent.

This suit and subsequent pleadings were all served upon the respondents. They failed to enter appearance and on 15<sup>th</sup> October, 2010, directions were given that this matter be heard by way of oral evidence. This matter came up for hearing before me on 8<sup>th</sup> December, 2011.

The applicant testified that in 1985, he was invited by the 1<sup>st</sup> respondent (the 1<sup>st</sup> respondent is the applicant's sister) to occupy and take possession of her two plots known as plot numbers 147 and 148

measuring 60 by 40 feet situated at Kasarani Hunters Estate. The 1<sup>st</sup> respondent was a shareholder of the 2<sup>nd</sup> respondent who was a land buying company.

The applicant took possession of these two plots in 1985 and constructed his house and developed the plot where he has been living with his family without any interference from anybody for a period of over twelve [12] years. According to the applicant, he is entitled by way of adverse possession under the provisions of the Limitations of Actions Act.

The 1<sup>st</sup> respondent is a sister of the applicant. Both the 1<sup>st</sup> and 2<sup>nd</sup> respondents were served with the pleadings in this matter and they failed to enter appearance or file any reply. The record shows that on 27<sup>th</sup> November, 2009, the 1<sup>st</sup> respondent appeared in court and was given leave to file a replying affidavit within fourteen [14] days. However, there seems to be no compliance with that order, thus the applicant's suit is not controverted.

Going by the applicant's sworn affidavits and his oral evidence, I am satisfied that he has been able to prove his claim against the defendants on a balance of probabilities.

Accordingly, I hereby grant prayer number one to four [1-4] of the Originating Summons.

However, the applicant shall bear the costs of this suit as the respondents did not oppose this claim.

**Judgment read and signed this 30th day of March, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

**Note:**

*This application was heard and concluded on 8<sup>th</sup> December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.*