



**REPUBLIC OF KENYA**

**High Court at Meru**

**Environmental & Land Case 52 of 2009**

**FESTUS GUANTAI M'KIRIMA.....PLAINTIFF**

**VERSUS**

**KIRIINYA S/O IKIRIMA .....DEFENDANT**

**JUDGMENT**

This case was filed by the plaintiff Festus Guantai M'Kirima against Kiriinya S/O Ikirima by way of originating Summons under Order XXXVI Rule 3D Civil Procedure Rules and Sections 7, 16, 17 and 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya.

In his supporting affidavit the plaintiff swore that the defendant in this suit disappeared way back in 1963 and had never been heard of or seen by anybody since then. As a result, it was, therefore impossible to effect personal service upon the defendant. The affidavit was in support of his claim that the plaintiff had become entitled to the whole of Land Parcel No. **ABOTHUGUCHI-KATHERI/1453** by operation of the Limitation of Actions Act, Cap 22, Laws of Kenya under the doctrine of adverse possession.

The defendant did not enter appearance even though service of summons was effected by way of substituted services. An interlocutory judgment was entered on 19.1.2010. During the formal proof proceedings, the plaintiff reiterated the veracity of his supporting affidavit. He proved that he had been in the suit land even before 1963 when it was registered in the name of the defendant. He also clarified that the defendant was his elder brother. He proved that he had occupied the suit land for more that 12 years without force, without secrecy and without fear thus satisfying the nec vi, nec clam and nec plecario principle. In the premises, he had satisfied the requirements of the Civil Procedure Act and the Limitation of Actions Act.

It is, therefore, declared that **JUSTUS GUANTAI M'KIRIMA** is the owner of Land Parcel Number **ABOTHUGUCHI/KATHERI/1453** under the doctrine of adverse possession. The Deputy Registrar of this Court is empowered to sign and execute all the necessary documents required to effect the transfer.

Written and Signed in Meru this 14th day of December, 2012.

**P. M. NJOROGE**

**JUDGE**

Coram: P. M. Njoroge, J.  
B. G. Kariuki for plaintiff  
Cc Mutinda/Mwonjaru

Delivered in Open Court and Signed this 17th day of December, 2012.

**P. M. NJOROGE**  
**JUDGE**