



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.1956 OF 2007

MARY WANGARI GACHINGA.....PLAINTIFF

VERSUS

GIBSON GATHUI MBUI.....DEFENDANT

J U D G M E N T

1. Mary Wangari Gachinga (hereinafter referred to as the plaintiff), has moved this court by way of an originating summons under Section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya and Order XXXVI Rule 3D of the Civil Procedure Rules. The plaintiff seeks determination of the following questions:
2. That the plaintiff is entitled to be registered as the proprietor of Land Reference No.Dagoretti/Riruta/S.99 in place of the defendant on the ground that the plaintiff has been in open continuous peaceful and uninterrupted occupation of the said land since the year 1987 that is to say a period of over twelve (12) years preceding presentation of this originating summons in court.
3. That the title of Gibson Gathui Mbui the defendant herein in respect of the said piece of Land is extinguished under the Limitation of Actions Act Cap 22 Section 17.
4. That the plaintiff's is under Section 38 of the Limitations of Actions Act Cap 22 entitled to be registered as the proprietor of the said piece of Land namely Dagoretti/Riruta/S.99.
5. That the cost of this suit be awarded to the plaintiff.
6. The originating summons was supported by an affidavit sworn by the plaintiff in which the plaintiff depones that she has been in open peaceful and quiet occupation of the suit property for a period of over 12 years, from August, 1987. She explained that in the year 1996, the defendant Gibson Gathui Mbui, filed a suit against the plaintiff seeking to have her evicted from the suit property. The defendant's suit was however dismissed on 28th July, 2003 for want of prosecution.
7. The defendant was duly served with the originating summons but did not file any response. On 20th February, 2008, directions were given for the hearing of the suit to proceed by way of

- affidavit. The defendant was again served with the hearing notice but again failed to attend court for the hearing.
8. I have considered the application before me. It is apparent that the plaintiff's application is not opposed. The plaintiff swears that she has been in occupation of the suit premises from August, 1987. Although an attempt was made by the defendant in the year 1996 to have the plaintiff evicted from the suit premises the defendant apparently did not pursue the suit and the suit was subsequently dismissed about 8 years ago.
 9. In the circumstances I find that the defendant's right to the suit property if any has been extinguished by virtue of Section 17 of the Limitation of Actions Act. Consequently, the plaintiff is entitled under Section 38 of the Limitation of Actions Act to be registered as the proprietor of the suit property. Accordingly, I give judgment in favour of the plaintiff. In the circumstances of this case, I do not find it appropriate to award any costs.
 10. Those shall be the orders of the court.

Dated and delivered this 4th day of February, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

G. Kamande for the plaintiff

Advocate for the defendant absent

B. Kosgei - Court clerk