



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2474 of 1994 (OS)

HANNAH WAMBUI KIBE (The Administratrix and beneficiary of the Estate of JOHN KIBE RAGAE).....PLAINTIFF

VERSUS

MARGARET NJERI NJOROGE(The Administratrix and beneficiary of the Estate of NDUA THIONGO).....DEFENDANT

JUDGMENT

The Plaintiff brought this suit by way of Originating Summons seeking orders for declaration that she has acquired proprietorship of the suit premises LR NO. DAGORETTI/RIRURA/2291 being a subdivision of LR NO.P130 having been in possession in excess of 12 years.

She also sought orders that she be registered as the sole proprietor of the suit premises comprised of 0.1 Hectares in place of the Defendant.

The Plaintiff testified that the suit premises was purchased by her late husband Kibe from Njoroge Ndua Thiongo the late husband of the Defendant in 1969 and they took possession and have lived there since then uninterrupted to date.

The Originating Summons is supported by an affidavit sworn by the Plaintiff in which she avers that she has been in possession of 0.1 Hectares on land parcel No. DAGORETTI/RIRUTA/2291 being a subdivision of parcel No. 130 and consequently the Defendant's Title thereto in respect of the said portion of land has been extinguished by virtue of Section 17 of the Limitation of Action Act, and that the Plaintiff is entitled to be registered as the sole proprietor of the said 0.1 Hectares being the whole plot comprised in Title No. DAGORETTI/RIRUTA/2291 instead of the Defendant herein who is so registered.

The Plaintiff in her evidence testified that she has been in possession of the suit land since 1969 and that she has constructed on the suit land a 2 storey building with 25 rooms, a bar and one – two bedrooms house thereon since 1978. She further told the court that she entered the suit land with the full knowledge of the Defendant and her deceased husband and that she has extensively developed the suit land and built the aforesaid building therein with the full knowledge and consent of the Defendant and her deceased husband.

The Defendant concedes that the Plaintiff has been in possession of the suit premises LR NO. DAGORETTI/RIRUTA/2291 which was as a result of the subdivision of plot No. 130 which was

registered in the name of her late husband. At the death of her late husband she filed a succession cause which led to the subdivision

of Plot No. 130 into 5 sub plots being:-

DAGORETTI/RIRUTA/2289

DAGORETTI/RIRUTA/2290

DAGORETTI/RIRUTA/2291

DAGORETTI/RIRUTA/2292 and

DAGORETTI/RIRUTA/2293

She did register the sub divisions in her names. She also conceded that her late husband had sold the suit land to the late husband of the Plaintiff and that they took possession in 1976 and the Plaintiff has been in possession since then, continuously and without interruption and has done extensive developments most of them being commercial when asked if she was willing to transfer the suit land to the Plaintiff, she said she would have to consult her children.

The Plaintiff's claim is based on adverse possession. The subdivision was carried out after the Plaintiff had been in adverse possession of the land for a period of over 12 years. How the Plaintiff came into occupation and took possession is not material to prove a claim under adverse possession. All that she has to do is to establish that she came into occupation and took possession and that she has been in continuous possession exclusively and without interruption for a period of 12 years.

This the Plaintiff has proved she came into occupation and took possession in 1976 she has done extensive development she has put up 2 storey with 25 rooms, a bar and another one – two bed roomed house. All these she did with the consent and knowledge of the Defendant. The Defendant concedes that she did not try to stop the construction at any time.

It is the Plaintiff's case therefore that she had acquired interest under Section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya enabling her to be registered as the true proprietor of the suit land.

Section 7 of the Limitation of Actions Act provides that an action may not be brought by any person to recover land after the end of 12 years from the date the right of action accrued to him or if it first accrued to some person through whom he claims, to be that person.

This is based on the principle that rights of action do not live for ever when unclaimed. It is in the public interest that a person who has stayed undisturbed for long in land should be protected. The Plaintiff in adverse possession claim has to prove:

- (a) Continuous use of land for 12 years and over without secrecy, force or evasion
- (b) Knowledge of the owner of the occupation
- (c) Continuous possession without any break or interruption for 12 years

All the above the Plaintiff has established and therefore she has proved that she has acquired title to the suit land being LR NO. DAGORETTI/RIRUTA/2291 by adverse possession and I therefore grant Prayers 1, 2 and 3 of the Originating Summons dated 2nd November 1998.

The Plaintiff is also entitled to the costs of this Originating Summons and it is so ordered.

Dated and delivered at Nairobi this 20th day of May, 2007.

J.L.A. OSIEMO

JUDGE