



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (Milimani Law Courts)
Civil Case 445 of 2002

MIRIAM WANGARI MUNYIRI.....PLAINTIFF

VERSUS

BERNARD MUGAMBI GITURU.....1ST DEFENDANT

HELLEN KIGAMBI MUGAMBI.....2ND DEFENDANT

JUDGMENT

The plaintiff brought this suit by way of Originating Summons seeking a declaration of entitlement by adverse possession of a piece of land registered in the name of the defendants under the Registered Land Act (Cap 300) title L.R. NO. 13753.

She also seeks an order that she be registered as the sole proprietor of the said land in place of **BERNARD MUGAMBI GITURU and HELLEN KIGAMBI MUGAMBI** the defendants.

The plaintiff's case is that she is about 90 years old. She came to Nairobi long time ago and settled on the suit land in 1931 and she has lived on the suit land ever since continuously and uninterrupted. She constructed houses on the suit land and planted trees. She has 8 children 6 of whom have died and 2 are alive. They are grown ups and married with children. For all these years it was until 1985 when the defendants came to the suit land and informed her that they had been allotted the suit land and asked her to vacate but she resisted the move.

She requested the court to make a declaration that she has become entitled to the suit land by adverse possession. She called 4 witnesses to testify in her favour.

PW2 THOMAS MUKIRI MBURU who told the court in his evidence that he is the son of the plaintiff and he is about 58 years old and that he was born on the suit land. They have lived there all along uninterrupted. PW3 FATHER JOHN NGETHE in his testimony told the court that he is Greek Orthodox priest and that he has known the plaintiff MIRIAM WANGARI MUNYIRI since 1957 when he was a primary school pupil at St. Mary Primary School. She lived on the suit premises which was opposite the school about 100 metres away from the school. He used to visit her home for lunch and they used to call her grandmother (**cucu**). She lived with her children. He moved away after school. In the year 2002 he received information that there were moves to evict the plaintiff from the suit land by people who claimed that they had been allocated that land. He visited the suit land and found the plaintiff with many children

who lived with her on the suit land. He further told the court that he had visited the plaintiff to find out why she was being evicted from the suit land since she had lived there for many years. He advised the plaintiff to seek legal aid.

PW4 EDWARD FRANCIS KARANJA told the court that he is a retired Chief and that he knew the plaintiff in the year 1992 when he was transferred to Karen Location. He received complaints from a group called Karen and Langata District Association about the people who lived in slum at the area and whether there were plans to have them removed from the area. The plaintiff and her children were some of the people who were affected. He summoned the plaintiff and her children to find out when they came there. The plaintiff told him that she had settled on the suit land very many years back in 1931. She had built houses on the suit land. The plaintiff had children. Some of her grandchildren were over 20 years who were all born on the suit land. When he left Karen Location the plaintiff and her family still lived on the suit land.

PW5 MARY NYAMBURA WAIME in her testimony told the court that she works at Karen College as a driver and that she has known the plaintiff and her family since 1965. She knew the plaintiff lived on the suit land and she has continued to live there to date. The plaintiff had put up houses and planted trees on the suit land. The defendants are husband and wife. The first defendant BERNARD MUGAMBI GITURU elected to give evidence on his behalf as well as on behalf of the 2nd defendant.

He told the court that the suit land LR NO. 13753 is registered in the names of both himself and his wife HELLEN KIGAMBI MUGAMBI. He produced letter of allotment dated 19th July 1985. They paid statutory fees which amounted to Shs.48,268.35 and eventually a title was issued in his name and that of his wife as joint owners. The title was issued to them on 29th September 1989. When he visited the suit land there were structures. An elderly lady emerged from one of the structures who gave her name as MIRIAM WANGARI MUNYIRI (the plaintiff) and her daughter. When he informed her that he had been allotted with the suit land; she looked surprised that the suit land had been since she had lived there for many years. She pleaded with him for time to enable her look for an alternative place to move to.

He visited the suit land several times to urge the plaintiff to vacate the suit land to no avail. In the end he saw the Provincial Commissioner who called the area District Officer and instructed him to assist in evicting the plaintiff and her family from the suit land. The plaintiff was evicted in 1993 and the plaintiff's structures were demolished. But later when he visited the suit land he found that she had erected new structures on the suit land where she lives to date.

There is no dispute that the defendants are the registered proprietors of the suit land LR NO.13573 situate at Dagoreti Karen in Nairobi. The same having been allotted to them in 1985 and he produced a title deed to prove ownership. But the plaintiff claims that she had acquired title to the same by adverse possession having lived on the suit land since 1931. Her children and several grandchildren were all born on the suit land and have lived there ever since. She called 4 witnesses who gave evidence and confirmed that she has lived on the suit land for very many years.

The plaintiff's claim is based on adverse possession. For one to prove a claim of title by adverse possession all that he is required to do is to establish that he came into occupation and took possession and that he has been in continuous possession exclusively and without interruption for a period of more than 12 years. This the plaintiff has established. She went into occupation and took possession of the suit land in 1931 and she has been in continuous possession exclusively and without interruption for all those years. Her children and grandchildren were all born and reared on the suit land.

The defendants were registered as proprietor in 1989. But by that the title to the suit land had passed to the plaintiff by adverse possession and therefore there was no title in existence to pass to the defendants

The plaintiff has proved that she has acquired title to the suit land through adverse possession and her claim therefore succeeds and it is so declared.

I order that the suit land LR NO. 13753 be registered in the name of MIRIAM WANGARI MUNYIRI in

the place of BERNARD MUGAMBI GITURU and HELLEN KIGAMBI MUGAMBI. No order as to costs.

Dated and delivered at Nairobi this 7th day of June 2006.

J.L.A. OSIEMO

JUDGE