



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1054 OF 2013 (OS)**

**IN THE MATTER OF THE PROPERTY KNOWN AS LR 36/11/347,**

**SITUATE IN EASTLEIGH, NAIROBI COUNTY**

**AND**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF A CLAIM**

**BETWEEN**

**NURU ABDALLA AHMED.....APPLICANT**

**VERSUS**

**ARSHAD BEGUM LUHAR.....1<sup>ST</sup> RESPONDENT**

**SANAU KOILAPA.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

1. By Originating Summons dated 30<sup>th</sup> August 2013, brought under order 37 rule 1, 7, 11 and 16 and order 40 rules 1(a), 2, 3, and 10 of the Civil Procedure Rules, 2010 and the inherent power of the court.

2. LET ARSHAD BEGUM LUHAR of P. O. Box Number 45808-00100 Nairobi and SANAU KOILAPA of P. O. Box 74300-00100 Nairobi within 15 days after service of this Originating Summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued on the application of NURU ABDALLA AHMED who claims to be entitled to the adverse possession of all that parcel of land known as LR 36/11/247, situate in Eastleigh, Nairobi County, and for the determination of the following questions:-

- a) Whether the property known as LR 36/11/347, situate in Eastleigh, Nairobi County was at all material times under the ownership of Hurbai J Juma.***
- b) Whether the applicant has been in exclusive and uninterrupted occupation of the property known as LR 36/11/347, situate in Eastleigh, Nairobi County for a period of over 12 years, with the knowledge of the respondents and in particular the 1<sup>st</sup> respondent.***
- c) Whether the applicant is entitled to be declared as the lawful proprietor of the property known as LR 36/11/347, situate in Eastleigh, Nairobi County be adverse possession.***
- d) Who is to bear the costs of the suit.***

3. The applicant seeks the following declarations and orders upon the determination of any or all of the foregoing questions:-

**1) A declaration do issue that the application is entitled as the lawful proprietor of the property known as LR 36/11/347, situate in Eastleigh, Nairobi County by adverse possession.**

**2) A declaration do issue that any interest or title claimed by the respondents over the proprietorship of the property known as LR 36/11/347, situate in Eastleigh, Nairobi County has been extinguished.**

**3) This court do issue a vesting order, vesting all the proprietary interest in all that property known as LR 36/11/374, situate in Eastleigh, Nairobi County to Nuru Abdulla Ahmed.**

**4) This court directs the Nairobi County Land Registrar to effect the ownership records in all that property known as LR 36/11/347, situate in Eastleigh, Nairobi County to Nuru Abdulla Ahmed.**

**5) A permanent injunction do issue, restraining the respondent, either by themselves, their servants, and/or agents or otherwise howsoever from trespassing, remaining upon, occupying, leasing, licensing, selling, letting, constructing upon, carrying on any form of business, or otherwise howsoever dealing in the property known as LR 36/11/347, situate in Eastleigh, Nairobi County.**

**6) Costs and interest of this suit.**

**7) Any other relief that this honorable court may deem fit to grant.**

4. The Originating Summons is supported by the affidavit of Nuru Adulla Ahmed, the applicant herein, sworn on the 30<sup>th</sup> August 2013.

5. There is a replying affidavit sworn by Arshad Begum Luhar, the 1<sup>st</sup> respondent herein on the 1<sup>st</sup> October 2013. The 1<sup>st</sup> respondent's advocates M/S T. K. Kariba Mbabu & Co. Advocates filed a notice of motion dated 30<sup>th</sup> January 2015 seeking leave to cease acting for the 1<sup>st</sup> respondent. The said application was allowed.

6. The applicant sought and was granted leave to serve the 2<sup>nd</sup> respondent by substituted service by way of advertisement in the Daily Newspapers.

7. The matter proceeded by way of *viva voce* evidence on 24<sup>th</sup> November 2020.

8. Pw2, Nuru Abdulla Ahmed, the applicant herein adopted his witness statement dated 8<sup>th</sup> October 2020. He also relied on the list of documents filed on 8<sup>th</sup> October 2020. He produced the documents in the list of documents as exhibits P1 to P7 respectively.

9. PW2, Abdi Abdul Sheikh and PW3, Hussein Omar Adan also adopted their witness statements filed on 8<sup>th</sup> October 2020.

10. It is the applicants/plaintiff's case that he has been living on the suit premises LR No. 36/11/347 in Eastleigh Nairobi since 15<sup>th</sup> December 1988 with his brother Yarrow Abdulla. They also lived with Mr. Abdul Aziz Luhar (deceased). The late Abdul Aziz Luhar, was a grandson of Hurbai Jamal Juma (deceased) the original and registered proprietor of the suit property. It is his case that he lived in one of the servant quarters on the suit property until Abdul Aziz (deceased) left in 2000. He thereafter lived on the suit premises without permission.

11. He has been living on the suit property uninterrupted. He has been paying rates, electricity and water for the suit property. PW2 and PW3 confirmed that the plaintiff/applicant is in actual occupation of the suit premises.

12. At the close of the oral testimonies the plaintiff/applicant filed written submissions.

13. I have considered the pleadings, the evidence on record and the written submissions. The issue for determination is whether the plaintiff/applicant has established ownership by way of adverse possession.

14. It is on record that the plaintiff has been in continuous occupation of the suit property since 15<sup>th</sup> December 1988. He continued to occupy the same from the year 2000 when the grandson of the original owner left. The plaintiff is still in occupation of the suit property. There is no evidence that the respondents have sought and retaken possession of the suit property.

15. The plaintiff's evidence has not been challenged. The plaintiff's claim is that he has been on the suit premises for over twelve (12) years. I have considered the principles governing the claim for adverse possession.

**a) That the plaintiff must have clear possession of the property.**

**b) That the occupation of the land/property must be without the consent of the owner of the property.**

**c) That the occupation must be uninterrupted for a continuous period of more than twelve (12) years.**

**d) That the plaintiff must exhibit an extract copy of the title under litigation.**

16. I find that the plaintiff's facts as presented meet the above conditions. The facts are undisputed. In the case of **Wilson Kazungu Katana**

**& 101 Others vs Salim Abdalla Bakshwein & Another (2015) eKLR** the Court of Appeal relied on the case of **Kasuve vs Miwani Investments Ltd & 4 Others [2004] eKLR** where it was stated:-

*“ . . . . .in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years, either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”.*

17. Similarly in the case of **Peter Mberi Michuki vs Samuel Mugo Michuki Civil Appeal No 220 of 2013** the Court of Appeal held that:-

*“This court in Francis Gicharu Kariuki vs Peter Maina Civ. Appeal No 2930 of 2002 (Nairobi) approved the decision of the High Court in the case of Kimani Ruchere vs Swift Rutherfords Co. Ltd [1980] KLR where Kreller J held.....The plaintiffs have to prove that they used this land which they claim as of right, nec vi, nec clam, nec precario (no force, no secrecy, no persuasion) so the plaintiff must show that the company had knowledge (or the means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to attempt it by way of recurrent consideration”.*

I am guided by the above authority.

18. In conclusion, I find that the plaintiff has satisfied the conditions set out on his claim for adverse possession to succeed. I find that he is entitled to the prayers sought.

19. Accordingly, judgment is entered for the plaintiff/applicant as against the defendants/respondents as follows:-

*a) That a declaration is hereby issued that the applicant is entitled as the lawful proprietor of the property known as LR 36/11/347 situated in Eastleigh Nairobi County by adverse possession.*

*b) That a declaration is hereby issued that any interest or title claimed by the respondents over the proprietorship of the property known as LR NO 34/11/347 situate in Eastleigh Nairobi County has been extinguished.*

*c) That a vesting order is hereby issued vesting all proprietary interest in all that property known as LR NO 36/11/347 situate in Eastleigh Nairobi County to Nuru Abdulla Ahmed.*

*d) That the Nairobi County Land Registrar is directed to effect the ownership records in all that property known as LR No 34/11/347 situate in Eastleigh, Nairobi County to Nuru Abdulla Ahmed.*

*e) That a permanent injunction is hereby issued restraining the respondents, either by themselves, their servants and/or agents from trespassing, remaining upon, occupying, leasing, licensing, selling, letting, constructing upon, carrying on any form of business, or otherwise howsoever dealing with the property known as LR No 36/11/347 situate in Eastleigh Nairobi County.*

*f) Each party do bear own costs.*

It is so ordered.

Dated, signed and delivered in Nairobi on this 29<sup>th</sup> day of April 2021.

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Angwenyi for the Plaintiff/Applicant

No appearance for the Defendants/Respondents

Phyllis – Court Assistant