

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 3 OF 2019 (OS)

ELIZABETH NTINYARI..... PLAINTIFF

VERSUS

JOYCE KABURO RAUGA (being a trustee of

JUDY RAUGA GICHU, EDWARD MBAYA RAUGA,

RONALD MURIITHI RAUGA and NICHOLAS MUTWIRI RAUGA)....DEFENDANT

JUDGMENT

1. By way of an Originating Summons filed on 18.1.2019, the plaintiff is claiming entitlement to land parcel No. NYAKI/GIAKI/KIBURINE/12 measuring 8.2 Ha by way of Adverse Possession. The Defendant did not enter appearance, hence the case proceeded as a formal proof.

2. PW1, Elizabeth Ntinyari adopted the contents of her affidavit dated 21.12.2018 as her evidence. She contends that she has been in continuous and peaceful possession of the suit land since 1974. She has established her home there and her entire family lives on the said land. She has extensively developed the land, where she has put up permanent and semi-permanent buildings thereon. Thus by dint of her uninterrupted peaceful occupation, she has acquired title to the said land. She produced a green card for NYAKI/GIAKI/KIBURINE/12 in support of her claim.

3. The key issue for determination is whether or not the Plaintiff has acquired title to the suit land by way of adverse possession. In **Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR** adverse possession was described as follows:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”

4. The evidence of the plaintiff has not been challenged at all. I am therefore inclined to find that the plaintiff has proofed her case on a balance of probabilities. I proceed to declare that the plaintiff is entitled to the suit land parcel NYAKI/GIAKI/KIBURINE/12 by way of adverse possession. The defendant is directed to execute the necessary documents to effect the suit land into the name of the plaintiff, and in default, the Deputy Registrar of this court is authorized to sign such documents. No orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 21ST DAY OF APRIL, 2021 IN PRESENCE OF:

C/A: Kananu

Gatari Ringera for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE