



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 47 OF 2018 (OS)

ELISHA KIPNGETICH MAIYO.....1ST PLAINTIFF

JACOB KIPKURGAT MAIYO.....2ND PLAINTIFF

VERSUS

JUDA CHEPSIROI SITIENEL.....DEFENDANT

JUDGMENT

1. The 2nd plaintiff and his father filed an Originating Summons dated 26/4/2018. Subsequently his father passed on and in an amended Originating Summons dated 19/10/2020, he was substituted with the current first plaintiff who now represents his estate. The suit land subject matter in this suit is **Land Reference No Kaplamai/Sirende Block 2(Ngonyek)/58**. In the Originating summons the plaintiffs seek the determination of the following questions:-

- (a) **Whether the plaintiffs have been in occupation or possession of 1.4 acres of the suit land for a period of 21 years or more openly, peacefully, continuously and without force.**
- (b) **Whether the respondent's title in respect of the said portion measuring 1.4 acres became extinguished upon the expiry of the period stated above;**
- (c) **Whether the applicants have acquired title to the said portions land by adverse possession**
- (d) **Whether the registration of the respondent as the proprietor of the whole of the suit land should be cancelled or prohibited;**
- (e) **Whether the applicants should now be registered as proprietors of the said portion measuring 4 acres or thereabouts;**
- (f) **Who should be condemned to costs hereof.**

2. There is an affidavit of service sworn by one **George Mumali** as evidence that the originating summons were served. No response was filed to the originating summons and it proceeded *ex parte*.

3. The 2nd plaintiff testified on 18/7/2019 as **PW1**. His evidence is that Isaac Kimaiyo Keter was his father; that the defendant is their neighbour; that he sold them one acre of land on 18/9/1995 at the consideration of **Kshs. 55,000/=**; that by then the defendant had a debt with the Agricultural Finance Corporation (AFC) which wanted to auction the land; that the AFC debt was reflected in the sale agreement produced as **P. Exhibit 1**; that in 1997 the defendant sold them another portion of **0.4 acres** for a consideration of **Kshs 28,000/=** vide a second agreement produced as **P. Exhibit 2**; that the 1st plaintiff peacefully took possession and fenced the two portions as one parcel and developed the land and lived on it while his father lived on a different parcel; that the defendant never repaid the loan to AFC and the Government waived the whole loan; that despite the waiver the defendant failed to pay the discharge fee required by the AFC and **PW1** resorted to paying it from his pocket; that he gave the original receipt (**P. Exhibit 6**) to the defend and to enable the latter go and collect the title from AFC; that according to an official search certificate (**P. Exhibit 7**) the land is still registered in the defendant's name; that the defendant has failed to transfer the land to the plaintiffs to date yet the 1st plaintiff has been on the land for 24 years without ever having lost possession of the same and without any record of any dispute over it.

4. **PW2, Elishah Kipleting Maiyo** testified on 2/2/2021. His evidence is that as per the Grant (**P. Exhibit 9**) he is the administrator of the estate of his late father, Isaac Kimaiyo Keter who was the original first plaintiff in this suit. he corroborated to a large extent the evidence given by **PW1** and stated that he has lived on the suit land since his childhood; that the plots purchased by his father border a plot earlier owned by his family; that in addition to the **Kshs. 4000/=** mentioned by **PW1**, his family paid a further **Kshs. 3000/=** being discharge processing fee; that the defendant lives on only a part of the main parcel No. **Land Reference No Kaplamai/Sirende Block 2(Ngonyek)/58**

which a whole measured approximately **7 acres** before the sale and that the defendant has never attempted to evict them from the suit land.

5. The plaintiff filed submissions on **17/2/2021**.

6. I have considered the pleading and the evidence of the plaintiffs in this unopposed Originating Summons. I find that the evidence that they have given supports their claim of adverse possession. The plaintiffs have been in occupation or possession of **1.4 acres** of the suit land for a period of in excess of **12 years** openly, peacefully, continuously and without force; any cause of action under contract could have been agitated within the first **3 years** after the execution of the second agreement dated **1/12/1997**, that, is up to **1/12/2000**; the plaintiffs have been in continuous and quiet possession, having entered the land peacefully from **1997** to date; the period of **12 years** within which the defendant could have acted to recover his land should be computed with effect from **1/12/2000** being the last date upon which he could have brought a claim under contract. Therefore by **1/12/2012**, the defendant had lost any right to recover the land as stipulated by **Section 7** of the **Limitation of Actions Act**.

7. I therefore allow the Amended Originating Summons dated **19/10/2020** and I issue the following orders:

(a) A declaration declaring that the plaintiffs have been in peaceful and continuous occupation of 1.4 acres of land out of Land Reference No Kaplamai/Sirende Block 2(Ngonyek)/58 for a period in excess of 12 years and that they have therefore acquired the same by way of adverse possession;

(b) A declaration declaring that upon the expiry of 12 years from 1/12/2000 the defendant has held title to the portion of land measuring approximately 1.4 acres in trust for the plaintiffs;

(c) An order cancelling the defendant's title over the suit land.

(d) An order that the plaintiffs shall be registered as the proprietors of the portion of land measuring 1.4 acres out of Land Reference No Kaplamai/Sirende Block 2 (Ngonyek)/58 which they occupy;

(e) An order directing that the Deputy Registrar of this court shall execute all documents as shall be necessary to effect subdivision of Land Reference No Kaplamai/Sirende Block 2(Ngonyek)/58 and the subsequent transfer of the approximately 1.4 acres of land occupied by the plaintiffs to the plaintiffs.

(f) An order that the defendant shall bear the costs of this suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 15TH DAY OF APRIL, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE