



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 290 OF 2017

FORMERLY KISII ELC CAUSE NO. 271 OF 2016

GIDEON EDWARD OGIRO.....PLAINTIFF

-VERSUS-

KIBOS OLE TOME AND 3 OTHERS.....DEFENDANTS

JUDGEMENT

The suit herein was commenced by way of an Originating Summons brought under Order 37 Rule 7 and 14 of the Civil Procedure Rules and under Section 38 of the Limitations of Actions Act in which the Applicant sought for the following orders: -

1. A declaration that the Defendants right to recover a portion measuring 1.8 acres of LR No. Trans Mara/Enaenyeny/14 is barred under the limitations of actions act
2. That an order do issue that the plaintiff be registered as the proprietor of the portion measuring approximately 1.8 acres
3. An order of injunction do issue restraining the defendant by himself or whomsoever acting on his instructions from interfering with the applicants occupation and possession of the suit land and the costs of the suit.

The summons was based on the grounds that the applicant has been in possession and counter occupation of the suit land for a period of 18 years and the said possession was continuous and uninterrupted and his initial entry to the suit land was pursuant to a sale agreement entered into on 30th November, 1988 between the plaintiff and the registered owner of the suit land.

The Applicant further contends that his taking possession of the land was advance to the interest of the defendant since the plaintiff has not taken any action and thus consequently the plaintiff had acquired title by way of deception.

The applicant had to the application attached a sale agreement and a copy of an application for registration of caution on the land.

The Originating Summons was opposed by the respondents who had filed a replying affidavit. The respondents jointly averred that they co-own land parcel Trans Mara/Enaenyeny/14 which parcel of land borders Kisii county.

The 1st Respondent stated that in 1998 he entered into an agreement with the plaintiff for the purchase of 1.8 acres which was to be exercised out of the suit land, however his brothers and sisters refused to consent to the sale of the said land and hence they stopped him from sale and when he tried to refund him the money he alleges that the plaintiff became evasive.

I have read the Originating Summons and the Replying Affidavit by the Respondent and the submissions filed and this is a suit in which the Plaintiff is making a claim of adverse possession on the grounds that he had purchased the suit land comprising about 1.8 acres in 1998 the respondent in his replying affidavit concedes that indeed there was a sale agreement but he was frustrated by his brothers and sisters.

In a claim of adverse possession, a party must establish he has been in a continuous and uninterrupted occupation for the suit land. in the instant case it is not disputed that the plaintiff applicant had occupied the suit land initially on the strength of the sale agreement, however the plaintiff's brothers and sisters have refused to consent and consequently the plaintiff had possessed, occupied and used the suit land from 1998. I Find that the plaintiff's interest in the land had become advance to that of the Defendant from the date the plaintiff's brothers and sisters refused to consent and I thus find that the Plaintiff/applicant had proved his claim on a balance of convenience and I consequently allow the Originating Summons dated 1st September, 2016 in the following terms: -

1. A declaration do issue that the Defendants right to recover a portion of land measuring 1.8 acres of LR No. Trans

Mara/Enaenyeny/14 is barred under Section 38 of the limitation of Actions Act.

2. That an order do hereby issue directing the Plaintiff/Applicant be registered as the proprietor of the portion of land measuring 1.8 acres of LR No. Trans Mara/Enaenyeny/14 and the Defendant/Respondent to avail all documents of transfer within 60 days in default the registrar is directed to sign the said transfer documents

3. That a permanent injunction do issue restraining the Defendants from interfering with the plaintiff's possession and occupation of the said 1.8 acres

4. That since the applicant had obtained he 1.8acres of land I order that each party shall bear its own costs of the suit.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **6th day** of **MAY, 2020**

Mohammed Kullo

Judge

6/5/2020

In the presence of: -

CA:Chuma

N/A for the parties

DATED, SIGNED and DELIVERED IN OPEN COURT at **NAROK** on this **6th day** of **MAY, 2020.**

Mohammed Kullo

Judge

6/5/2020

In the presence of:

CA:Chuma

N/A for advocates and parties

Mohammed Kullo

Judge

6/5/2020