



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC NO. 56 OF 2018**

**MOSONIK ARAP KATAM.....PLAINTIFF**

**VERSUS**

**KIPLANGAT ARAP DIGIRA.....DEFENDANT**

**JUDGEMENT**

By an Originating Summons dated 15<sup>th</sup> August, 2018 the Plaintiff/Applicant sought for orders on:-

- (a) Whether the Plaintiff has been in adverse possession of the defendant's parcel of land number Cis-Mara/Ololulunga/15035 measuring 3 (three) acres.
- (b) Whether the Plaintiff the plaintiff should be registered as the proprietor of parcel of land number Cis-Mara/Ololulunga/15035 measuring 3(three) acres.
- (c) Whether the District Lands Registrar Narok should be directed to register the Plaintiff on the possession of parcel known as Cis Mara/Ololulunga/15035 measuring 3 (three) acres in the place of the defendant.
- (d) Whether the Deputy Registrar should execute transfer of documents to effect transfer to the plaintiff herein of the 3 acres of land in the event the defendant refuses.
- (e) Whether the defendant should be restrained by an order of injunction from selling, transferring or in any other manner whatsoever interfering with the plaintiff's peaceful use, occupation and or enjoyment of 3 (three) acre comprised of parcel of land known as Cis-Mara/Ololulunga/15035 both parties pending the hearing and determination of the suit hereof.

The Originating Summons was supported by the Affidavit of the Plaintiff/Applicant in which he deponed that he has been in occupation of 3 acres of land being part of land parcel Cis Mara/Ololulunga/15035 since September, 1985 and that the said occupation has been peaceful and continuous for the said period and his right of occupation is adverse to that of the respondent.

Even though the application was served on the defendant/respondent he did not enter appearance and /or file any defence to the originating summons and the court having satisfied itself that there was proper service the court proceeded with the hearing of the suit exparte.

The plaintiff had testified and he stated that he purchased about 3 acres of land from the Defendant in 1985 for about kshs. 40,000. However, the defendant had failed to have the land transferred to him despite the fact that the dispute between them was mediated by the local chief. He stated that he had lived on the land since 1986. He produced before the court a sale agreement, a copy of the title of the land and a letter from the DC's Office to proof his claim.

Since the suit here was not defended by the defendant/respondent I find that the plaintiff/applicant claim is not challenged and since the plaintiff/applicant has been in continuous and peaceful occupation of the suit land and further that he has proved the ingredients one must satisfy for the grant of orders of adverse possession I accordingly find that the plaintiff has been in active and continuous occupation of the suit land and that he has proved his claim on a balance of probability and I thus enter judgment for the plaintiff against the defendant on the following terms:-

1. That the Plaintiff be registered as the proprietor of the 3 acres of land he lives on which forms part of land parcel Cis Mara/Ololulunga/15035.
2. That the Defendant do execute the transfer of the said 3 acres within 30 days of the judgement and in default the Deputy Registrar of this court to execute the said transfer and the Narok Land Registrar do accordingly register the Plaintiff as the owner of the 3 acres.

3. That an order of permanent injunction do hereby issue against the defendant by himself or whomsoever to either sale, transfer the said 3 acres.

4. Costs to the plaintiff.

**DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 5<sup>TH</sup> day of MAY, 2020.**

**Mohammed Kullow**

**Judge**

**5/5/2020**

In the presence of:

CA:Chuma

Mr Karia holding brief for Kilele for the Respondent

Mr Tanyasis for Onduso for the Plaintiff

**Mohammed Kullow**

**Judge**

**5/5/2020**