



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC SUIT NO. 20 OF 2018 (O.S)

FELIX KIRIMI MBAYA.....PLAINTIFF

-V-

SALOME BAHATI M' MUTUNGA.....DEFENDANT

JUDGMENT

1. The plaintiff instituted this suit on 23rd May 2018 by way of an Originating Summons seeking entitlement to land parcel no **L.R Kibirichia/2636 by way of adverse possession.**
2. On 30th January 2019, the court struck out the replying affidavit of the respondent as the same had been filled irregularly. This suit therefore proceeded undefended.
3. The plaintiff, **PW1, Felix Kirimi Mbaya** adopted his witness statement filed in court on 23rd May 2018, where he averred that in 1995, his late mother Julian Wanjiku Mbaya bought a piece of land measuring 50 feet by 100 feet from the defendant herein and that shortly thereafter, they moved from Machaka squatter village to the suit land where his mother built a house. However, in 1996, his mother died and he interred her remains on the suit land. He then built his own house measuring 24 feet by 14 feet, where he has lived ever since. It was his further evidence that the defendant has been promising to transfer the plot to him all those years but to no avail.
4. **PW2 David Gikunda** and **PW3, Rosalia Nchekei** adopted their recorded witness statements both filed in court on 20th March 2019 as their respective evidence. They aver that plaintiff is the one who has been on the suit land since the death of his mother in 1996. However recently in 2015, his sister Nancy Nkatha joined him on the suit land.
5. In support of his case, plaintiff produced the following documents as his exhibits; the land sale agreement between plaintiff's mother and the defendant dated 13.7.1995 and the certificate of official search indicating that land parcel no. Kibirichia/Kibirichia/2636 is registered in the name of the defendant.
6. It was submitted for the plaintiff that he had proved his case on a balance of probabilities, to the effect that he had lived on the suit land without the consent of the owner for the last 23 years. In support of his case, plaintiff has relied on the following cases; **Mbira vs. Gachuhi (2002) EALR 137** and **Maweu vs. Liu Ranching and farming Co-operative Society 1985 KLR 430.**
7. I have carefully considered the evidence on record, the plaintiff's submissions and the authorities in support thereof. The plaintiff's case was that in 1995, his late mother Julian Wanjiku Mbaya bought the suit land measuring 50 feet by 100 feet from the defendant herein and that shortly thereafter they moved from Machaka squatter village and his mother built a house where they moved unto. When his mother died in 1996, her remains were interred there. Then plaintiff continued to occupy the suit land to date. His evidence was corroborated by PW2 and 3. Plaintiff's evidence has not been challenged.
8. The Court of Appeal in **Francis Gicharu Kariri – v- Peter Njoroge Mairu, Civil Appeal No. 293 of 2002 (Nairobi)** approved the decision of the High Court in the case of **Kimani Ruchire –v – Swift Rutherfords & Co. Ltd., (1980) KLR 10 at page 16 letter B**, where Kneller J. held that:

“The plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)..”

9. From the circumstances of this case and in light of the plaintiff's evidence which remained unchallenged throughout the trial, it is my considered opinion that the plaintiff has been able to proof on a balance of probability that he had lived on the suit property and had been in occupation and actual possession of **L.R Kibirichia/2636** uninterrupted for a period exceeding 12 years.

10. Accordingly, I find that plaintiff's case is merited and I proceed to grant the following orders;

1. A declaration is hereby issued to the effect that Felix Kirimi Mbaya, the plaintiff herein has become entitled by way of adverse possession to all that parcel of land known as Kibirichia/Kibirichia/2636.
2. An order is hereby issued for rectification of the register, where plaintiff is to be registered as the sole proprietor of all that parcel of land known as Kibichia/Kibichia/2636 instead of the defendant Salome Bahati M'Mutiga.
3. The court's Deputy Registrar is hereby authorized to sign all requisite documents in order to give effect to the implementation of this Judgment.
4. Any orders of injunction, inhibition, restrictions or caution that may be subsisting are hereby discharged in order to facilitate the transfer of the land to plaintiff.
5. Each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 10TH DAY OF JULY, 2019

IN THE PRESENCE OF:-

C/A: Kananu

Kiongo holding brief for B.G Kariuki for plaintiff

Muthomi for defendant

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE