



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. 24 OF 2018 (OS)**

**JAMES MURITHI SILAS.....PLAINTIFF**

**VERSUS**

**DOROTHY NGARUINI.....1<sup>ST</sup> DEFENDANT**

**MURIUNGI M'NGARUINI (Sued as the Legal administrator of the**

**Estate of NGARUNYI MWINJA alias NGARUNI M'IKWIRIGA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Applicant filed an Originating Summons under Section 7, 17, 18, 37 and 38 of the Limitations of Actions Act Cap 22 and Section 28(h) of the Land Registration Act 3 of 2012 seeking the following Orders;

- a) A declaration that the plaintiff has acquired by way of adverse possession ownership of a portion of land measuring 1.5 acres out of land parcel NO. NKUENE/U-MIKUMBUNE/600 situated in MIKUMBUNE LOCATION, MERU COUNTY.
- b) Alternatively and without prejudice to the foregoing, that the Estate NGARUNYI MWINJA alias NGARUNI M'IKWIRIGA-deceased holds 1.5 acres out of land parcel NO. NKUENE/U-MIKUMBUNE/600 in trust for the plaintiff
- c) An order that the defendants do execute a valid transfer instrument for 1.5 acres out of land parcel NO. NKUENE/U-MIKUMBUNE/600 in favor of the plaintiff and in default the Executive Officer of this Hon Court be empowered to execute such transfer instrument.
- d) Costs of the suit.

2. The Originating Summons is supported by the Affidavit sworn by James Murithi Silas on 19<sup>th</sup> March 2019. The applicant avers that the family and relatives of the deceased approached him to assist them in buying a portion of land parcel NO. NKUENE/U-MIKUMBUNE/600 so as to enable them pursue a succession cause. Thus the applicant proceeded to buy 1.5 acres of the suit land. He took immediate possession after signing the agreement dated 11<sup>th</sup> November 2000.

3. The plaintiff contends that he has been in open, public and exclusive occupation and possession of the land, he has fenced it and he farms the said land.

4. He further avers that when the 2<sup>nd</sup> defendant filed the succession suit, he did list the plaintiff's claim and the 1<sup>st</sup> confirmation of grant had allocated him his 1.5 acres. However the 1<sup>st</sup> defendant filed an objection and the grant was revoked. He adds that he has lived on the said portion with the full knowledge of the heirs of the Estate NGARUNYI MWINJA alias NGARUNI M'IKWIRIGA-deceased since 2000 and he has never been dispossessed in any way.

5. The suit proceeded as a formal proof. The 1<sup>st</sup> defendant entered appearance but never filed her defence. The 2<sup>nd</sup> defendant never entered appearance.

6. During the trial, **PW1, James Murithi Silas** adopted his statement dated 19.6.2018 as his evidence. He also produced the documents in his list dated 19.6.2018 as his exhibits. **DW1, Muringi M'Ngaruni**, the 2<sup>nd</sup> defendant was in court and he joined issues with the plaintiff.

7. It was submitted for the plaintiff that he has proven the elements of adverse possession by being in open, continuous and exclusive possession of the suit land for a period of 12 years which was uninterrupted and peaceful.

8. The issue for determination is **whether the Applicant has acquired title to 1½ acres out of the suit land by way of adverse possession.**

9. In the case of Mtana Lewa –v- Kahindi Ngala Mwangandi- COA MALINDI (2015) eKLR it was held that:

*“Adverse Possession is essentially a situation where a person takes Possession of land, 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 12 years.”*

Also see Paul Mwangi Gachuru vs. Kamande Nguku (2017).

10. The claim of the plaintiff that he has been in exclusive possession of the suit land from the time he occupied the same in year 2000 has not been challenged. If anything, the 2<sup>nd</sup> defendant has admitted the claim, while the 1<sup>st</sup> defendant failed to file her defence despite the fact that she had entered appearance. In the circumstances, I find that the plaintiff has proved his case on a balance of probabilities. I proceed to give the following orders;

**a) A declaration is hereby issued that the plaintiff has acquired by way of adverse possession ownership of a portion measuring 1½ acres out of land parcel NO. NKUENE/U-MIKUMBUNE/600.**

**b) An order is hereby issued that the defendants do execute transfer instruments for the 1½ acres out of land parcel NO. NKUENE/U-MIKUMBUNE/600 in favor of the plaintiff and in default the Executive Officer of this Court is hereby empowered to execute the transfer instruments.**

**c) Each party to bear their own costs.**

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 5<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

Karanja for plaintiff

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**