



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO.19A OF 2020 (OS)

STEPHEN MUITA KIBIKU..... PLAINTIFF

VS

MUSAU WANANGO MUTUNYAA.....DEFENDANT

JUDGMENT

1. The Plaintiff filed suit against the Defendant on the 7/9/2020 seeking the following orders;

a. That the Plaintiff STEPHEN MUITA KIBIKU is entitled to be registered owner as proprietor of the whole of the land reference KAKUZI/KIRIMIRI/BLOCK 8/451 in the place of the current registered owner namely MUSAU WANANGO MUTUNYAA pursuant to the provisions of Section 38 of the Limitation of Actions Act Chapter 22 Laws of Kenya on the ground that since the year 1994 the Plaintiff has had exclusive possession and/or occupation of the above mentioned piece of land openly peacefully and uninterrupted to date that is to say for a period exceeding twelve(12) years preceding the presentation of this summons.

b. That an order do issue registering the Plaintiff as the proprietor of the said parcel of land in place of the Defendant and/or her successors in title thereof and the Land Registrar Thika District registry be directed to effect the registration of the said order.

c. That the costs of this Originating Summons be borne by the Defendant.

2. In his supporting affidavit dated the 26/8/2020 the Plaintiff averred that the Defendant is the registered proprietor of the suit land and attached a certified copy of the official search dated the 11/8/2020. That he entered the suit land in 1998 after a few years of cultivating it. That he has developed the land by drilling a borehole, fencing and erecting buildings on the said land as well as carrying out subsistence farming.

3. The Defendant was served through substituted services but he failed to enter appearance nor file a defense. The Plaintiff's case proceeded by way of a formal proof.

4. At the hearing the Plaintiff led evidence that he entered the suit land in 1986 with the permission of his grandfather whose land was adjacent the suit land. That upon entry he fenced the land, developed and occupied it openly, exclusively and continuously. He produced photographs to support in support of his testimony.

5. That the Defendant visited the suit land in 1990/99 but did not evict him. That the Defendant had knowledge that he was in occupation of the suit land and did not dispossess him.

6. At the close of the hearing the Plaintiff filed written submissions which I have read and considered.

7. 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 Plaintiff's 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). So the Plaintiff must show that the company had knowledge (or the means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to interrupt it by way of recurrent consideration”.one must show that they are in long exclusive, uninterrupted possession, possession is hostile to the rights of the registered owner and the registered owner is aware; possession has as much publicity as not to be missed by the registered owner.

8. A claim for adverse possession is supported by the following factors;

a) Whether entry and continued occupation of the suit land is adverse to the person in respect of whom adverse possession is

alleged?

- b) Whether the occupation is open, continuous, peaceful and uninterrupted?
- c) Whether entry and or occupation has not been disrupted in at least 12 years?
- d) Whether entry is permissive?

9. In this case the Plaintiff led evidence that he entered the land prior to 1998 first through cultivating with the permission of his grandfather who owned an adjacent land in the neighbourhood. That he has fenced the land, constructed buildings and lives on the said land from 1989 to date, a period of over 12 years. That the Defendant visited the suit land in 1990 and did not ask him to vacate nor dispossess him.

10. From the evidence led and the application of case law it is my view that the Plaintiff has proved title by adverse possession on a balance of probabilities and I proceed to grant judgment in favour of the Plaintiff as prayed.

11. I make no orders as to costs.

12. **It is so ordered.**

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 24TH DAY OF JUNE 2021

J. G. KEMEI

JUDGE

Delivered in the presence of;

Macharia for the Plaintiff

Defendant: Absent

Court Assistant: Alex