



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 36 OF 2018 (OS)

STANLEY GITONGA M'MWITHAMBUAPPLICANT

VERSUS

STEPHEN M. KIAMBATI1ST DEFENDANT

MURITHI ZACHARY MUTUAMBIA2ND DEFENDANT

JUDGMENT

1. This suit was filed by way of Originating Summons on 18.9.2018 where the applicant is seeking entitlement to the parcel of land L.R NO KIIRUA/NAARI/1554 by way of adverse possession. The Originating Summons is supported by the Affidavit sworn by the applicant, who avers that the suit land originally belonged to his father one M'Mwithimbu Mukira and that he was born and brought up on the land where he has been living to date. That in the year 2003, the 1st respondent fraudulently registered the land in his name and to defeat the applicant's interest in the land, he transferred the suit land to his son, the 2nd respondent on 20/4/2014. He avers that the suit land is his ancestral home but he is claiming the same through adverse possession from the time the 1st respondent got his title and he is not related to the respondents in any way.

2. He avers that he has extensively developed the suit land where he has a semi- permanent house, he lives on this land with his 5 wives and 14 children some of whom are married and also living on the suit land. Two of his sons have passed away and are buried on the suit land. He contends that the respondents have never set foot in the suit land as they live 15 Kms away.

3. The defendants never entered appearance nor have they filed a response to the originating summons.

4. The matter proceeded with the plaintiff testifying on 20th May, 2021. He adopted his recorded statement dated 17/9/2018 as his evidence. He reiterated the averments set out in his affidavit in support of the originating summons. He contends that the defendants have been threatening to evict him. He has been in occupation of the suit land for a period of over 15 years and is therefore entitled to the same by way of adverse possession.

5. In support of his case, the plaintiff produced the following documents as his exhibits; a copy of the green card in respect of the suit land, search certificate with the name of the applicant's father (green card), a copy of search certificate, a copy of charge sheet from a Nanyuki case.

6. The issue for determination is; ***Whether the Applicant has acquired title to the suit land by way of adverse possession.***

7. In **Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 others [2018] eKLR**, the Court explained the conditions to be met for one to prove an entitlement in adverse possession. The court proceeded to quote various authorities which explain the entitlement and I wish to borrow fully from the decision and capture it as hereunder;

“The requirements for Adverse Possession in Kenya has also been set out in the case of Mbira –v- Gachuhi (2002) IEALR 137 in which the court held that:

.....a person who seeks to acquire title to land by the method of Adverse Possession for the applicable statutory period must prove non-permissive or non-consensual, actual, open, notorious, exclusive and Adverse use by him or those under whom he claims for the statutory prescribed period without interruption....”

8. A perusal of the green card availed as P-EXH1 indicates that the applicant had lodged a caution on the suit land on 5.8.1992 as a licensee. It follows that even before the defendants were registered as owners of the land, the plaintiff had already started asserting his claim to the suit land. The said green card indicates that the 1st defendant was registered as the owner of the land on 4.7.2003. The claim of the plaintiff that

he has all along lived on the land has not been challenged in any way. I therefore find that the plaintiff has met the criteria of an adverse possessor.

9. In the circumstances the court hereby allows the plaintiff's claim of adverse possession. He is to be registered as the owner of the suit land L.R NO KIIRUA/NAARI/1554. No orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF JULY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 20.5.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE