



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 199 OF 2019 (OS)

BENJAMIN NYAKUNDI OPANDE.....1ST PLAINTIFF

BERNARD OBUDI.....2ND PLAINTIFF

MARGARET MUTHONI NJERI.....3RD PLAINTIFF

MARGARITA NJOKI MURIUKI.....4TH PLAINTIFF

SAMSON OTIENO NGWALA..... 5TH PLAINTIFF

RICHARD MUNYAO.....6TH PLAINTIFF

GEORGE NYAGUTI.....7TH PLAINTIFF

MARTHA LUCHIRI.....8TH PLAINTIFF

ELISHA OWITI.....9TH PLAINTIFF

JOYCE JEROTICH.....10TH PLAINTIFF

CHARLES ODHIAMBO ODONGO.....11TH PLAINTIFF

DICKSON MWANGI GATHUTHI.....12TH PLAINTIFF

GEORGE TYSON AWOUR.....13TH PLAINTIFF

POLYCARP NDEDE.....14TH PLAINTIFF

JOAN SYLVIA GATAKAA.....15TH PLAINTIFF

JOHN SEBASTIAN MALOBA.....16TH PLAINTIFF

BERNARD AUKA OKOTH.....17TH PLAINTIFF

RODA LYALI.....18TH PLAINTIFF

FLORENCE ATIENO ABUTO.....19TH PLAINTIFF

KEVIN OMONDI.....20TH PLAINTIFF

MARGARET ABUTO.....21ST PLAINTIFF

KEVIN MESHACK OTIENO.....22ND PLAINTIFF

NORAH MUCHITI.....23RD PLAINTIFF

NEMUEL NYAKERIGA ONDIEKI.....24TH PLAINTIFF
FAITH MUTHONI.....25TH PLAINTIFF
OCHIENG OGUTA.....26TH PLAINTIFF
JAMES NYANGENA MOSE.....27TH PLAINTIFF
DAVID MUASYA NZUVE.....28TH PLAINTIFF
DAVID MWITHI.....29TH PLAINTIFF
SHEILLA WERE.....30TH PLAINTIFF
BERNARD NYANG'AU.....31ST PLAINTIFF
ROSE ODHIAMBO.....32ND PLAINTIFF
JACKSON KISANG.....33RD PLAINTIFF
KAREN OGOTI.....34TH PLAINTIFF
MAURICE OGOL YALA.....35TH PLAINTIFF
MAUREEN AKINYI OTIENO.....36TH PLAINTIFF

- VERSUS -

NAOMI WANJIKU MUKUNDI.....DEFENDANT

JUDGMENT

1. The 36 plaintiffs initiated this suit through an originating summons dated 13/6/2019, taken against the defendant, Naomi Wanjiku Mukundi. They urged the court to grant them the following verbatim orders:-

1. A declaration that the plaintiffs are entitled to be registered forthwith the owners of all that parcel of land known as LR No. 6845/91 (the suit land) which the plaintiffs have been in adverse possession since the 1996 to date for more than 12 (twelve) years immediately preceding the presentation of this suit and, on which they have lived openly and continuously as of right and in adverse possession and without any interruption from the defendant or/and that the defendant's title to the suit land has been extinguished in favour of the plaintiffs under Sections 37 and 38 of the Limitation of Actions Act, Laws of Kenya.

2. That the parcel of land LR No. 6845/91 be transferred /vested to or in the plaintiffs.

3. An order for permanent injunction be issued restraining the defendant her employees, servants, agents or any person claiming through her from evicting the plaintiff from the parcel of land known as LR No. 6845/91 or from fencing the suit land or interfering with the plaintiffs' possession of the same or alienating, transferring, disposing and/or dealing with the suit land in any manner whatsoever.

4. That the defendant to transfer the suit land to the plaintiff and in default the Deputy Registrar to execute all necessary and relevant documents to effect the transfer to the plaintiffs.

5. An order for costs and interest thereon of this summons.

6. Any other of further relief that this honourable court may deem fit and just to order.

2. The originating summons was supported by an affidavit sworn on 13/6/2019 by Benjamin Nyakundi Opande (**the 1st plaintiff**). Also filed with the originating summons was a written Authority to Act, signed by the 36 plaintiffs, authorising **Benjamin Nyakundi opande, Bernard Obudi, and Margaret Muthoni Njeri** to represent the 36 plaintiffs in these proceedings and to execute all necessary documents on their behalf.

3. On 18/7/2019, the court directed the plaintiffs to serve summons upon the defendant through a prominent notice in either **The Daily Nation Newspaper** or **The Standard Newspaper**. Similar directions were issued on 11/12/2019. Counsel for the plaintiffs subsequently confirmed to the court that the plaintiffs had complied with the court's directions on both occasions. The defendant did not, however, enter appearance. Consequently, this suit proceeded to hearing as an undefended cause on 31/5/2021. The plaintiffs led evidence by one witness, Benjamin Nyakundi Opande, who testified as PW1. He adopted the affidavit sworn in support of the originating summons together with his

witness statement dated 13/6/2019 as part of his sworn evidence- in-chief. The originating summons was canvassed through written submissions dated 14/6/2021 and filed by the firm of **Kamunye Gichigi & Company Advocates**.

4. In summary, the plaintiffs' case was that most of them were original allottees of **Land Reference Number 6845/91 (the suit land)**. A few of the original allottees had sold their plots. The original allottees were allocated the suit land in the early 1990s by a group of people calling themselves *Twinbird Developers Embakasi* and *Twinbird Property Developers*. Each allottee was paying Kshs.5000 to the group. The leader of the allotting group was one **David Ng'ang'a**. They settled on the land in early 1990s. In 1999, a man who did not identify himself went to the land on a Sunday and informed them that the land belonged to him because he had purchased it from *M/s Njiru Githunguri Farm (1966) Limited*. They subsequently confronted Mr David Nganga who issued them with plot ownership certificates bearing the name of *Twinbird Property Developers*. In 2005, their representatives visited the Office of *Njiru Githunguri Farm (1966) Limited* but the said company informed them that they had sold the land. They subsequently established that the defendant was the registered proprietor of the suit land.

5. They further contended that by the year 2005, most of the plaintiffs had constructed permanent developments on the suit land. They exhibited photographs of permanent developments which they contended were erected on the suit land by them. It was their case that they had been in open and uninterrupted possession of the suit land since the 1990s when the entity called *Twinbird Property Developers* allotted them the suit land and they took possession thereof. They contended that they had acquired title to the suit land under the doctrine of adverse possession and that the defendant's title had been extinguished in their favour. Lastly, they contended that in 2019, they received notices requiring them to vacate the suit land and the said notices prompted them to bring this suit. They urged the court to grant them the orders set out in the originating summons.

6. I have considered the originating summons together with the evidential materials and submissions presented in support of the summons. I have also considered the relevant legal framework and common law principles governing the doctrine of adverse possession. The originating summons is undefended because the defendant neither entered appearance nor filed a response to the summons. Consequently, the single question falling for determination is whether the plaintiffs have satisfied the criteria upon which title to land is acquired under the doctrine of adverse possession.

7. The criteria upon which title to land is acquired under the doctrine of adverse possession under the Kenyan legal system is that the adverse possessor takes possession of the land and asserts rights over it openly and without interruption for a period of twelve years and the title holder neglects or omits to take action against the adverse possessor to recover the land in assertion of his title during that period. The doctrine of adverse possession is underpinned by **Section 7** of the **Limitation of Actions Act**.

8. The plaintiffs presented an official search dated 6/6/2019 showing that the defendant was the registered proprietor of **Land Reference Number 6845/91** comprised in **Title No. IR 199408**. Further, they presented evidence to the effect that they entered the suit land between 1990 and 2000 and they have had uninterrupted and open possession of the land since then. They have developed permanent structures on the land. They exhibited the permanent structures. Their claim that they had acquired title to the suit land under the doctrine of adverse possession was not challenged by the defendant. They took out the originating summons herein in June 2019.

9. In the absence of any response nor controverting evidence from the defendant, the court is satisfied that the plaintiffs have met the criteria upon which title to land is acquired or extinguished under the doctrine of adverse possession. Consequently, the originating summons dated 13/6/2019 is allowed in terms of **Prayers 1, 2, 3 and 4**. The plaintiff shall have costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 29TH DAY OF SEPTEMBER 2021

B M EBOSO

JUDGE

In the Presence of: -

Mr Gichigi for the Plaintiffs

Court Assistant: Lucy Muthoni

NOTE:

The relevant suit was heard and a Judgment date fixed when I was stationed at Nairobi (Milimani) Environment and Land Court Station. Subsequent to that, I was transferred to Thika Environment and Land Court Station. This is why I have delivered the Judgment virtually at Thika.

B M EBOSO

JUDGE