



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 59 OF 2019 (OS)

PETER MUKUNA.....1ST PLAINTIFF

IRENE WAMBUI2ND PLAINTIFF

VERSUS

SAMIA PROPERTIES LIMITED1ST DEFENDANT

MBO-I-KAMITI FARMERS CO. LTD.....2ND DEFENDANT

JUDGMENT

1. On 29/3/2019, the plaintiffs, Peter Mukuna and Irene Wambui, took out an originating summons dated 28/3/2019, seeking the following orders:-

a) This honourable court be pleased to declared that the 1st respondent's title to land parcel Ruiru/Kiu Block 4/2031 has become extinguished by operation of the law and that the applicants herein have become entitled to the whole parcel of land through adverse possession.

b) The court be pleased to order that the whole of land parcel no. Ruiru/Kiu Block 4/2031 be registered in the names of Peter Mukuna and Irene Wambui.

c) The 1st respondent do execute all the necessary documents to effectuate the transfer of all that parcel of land known as Ruiru/Kiu Block 4/2031 to the applicants and in default the Deputy Registrar of this honourable court be empowered to do so.

d) The costs hereof be provided for.

2. The originating summons was supported by an affidavit sworn on 28/3/2019 by Peter Mukuna. The defendant did not enter appearance in the originating summons. Consequently, the originating summons was heard as an undefended cause on 13/10/2021 before me. *Viva voce* evidence was taken. Peter Mukuna testified as **PW1**. Thereafter, the plaintiff closed their case. The plaintiff subsequently filed written submissions dated 21/10/2021. The originating summons now falls for determination.

3. In summary, the plaintiff's case is that the 1st defendant is the registered proprietor of land title number **Ruiru/Kiu Block 4/2031 [the suit property]**. The suit property initially belonged to the 2nd defendant and was previously designated as **Kiu/Ruiru Block 2/2031** before the subsequent subdivisions pursuant to which it was surveyed as **Ruiru/Kiu Block 4/2031**. On 13/6/2003, the plaintiff purchased the suit property from the 2nd defendant and they were issued with a receipt for the purchase. They immediately took possession of the suit property. They developed the suit property extensively. They have been living on the suit property from the time they acquired it. They have commercial buildings on the suit property. They run a school on the suit property.

4. The plaintiffs further contend that in January 2007, they came across a letter from the 1st defendant, indicating that they intended to compensate one **Stephen Waweru Njenga** with several parcels of land, including the suit property. When they made inquiries, they were assured that the suit property would be transferred to them. This did not happen. They subsequently made a report at Kasarani Police Station and a caution was lodged on the suit property by the DCI. They contend that they have been in open user, occupation, and possession of the suit property since 2003 and that the 1st defendant has never attempted to have possession of the suit property nor interrupted their possession of the suit property through eviction suit or counterclaim. They urge the court to grant them the orders sought in the originating summons.

5. I have considered the originating summons, the supporting affidavit and the submissions. The defendants did not oppose the originating summons. The plaintiffs exhibited an official search dated 19/2/2019 showing that the suit property was at the time of initiating this suit registered in the name of **Samia Properties Ltd**. The contention that the plaintiffs have been in open and uninterrupted possession of the suit property since 2003 has not been controverted. Similarly, the contention that the plaintiffs have extensively developed the suit property

has not been controverted.

6. In the circumstances, the court is satisfied that the plaintiffs have proved their claim on a balance of probabilities. Consequently, the originating summons dated 28/3/2019 is disposed in the following terms:

a) It is hereby declared that the 1st defendant's title to land parcel number Ruiru/Kiu Block 4/2031 has become extinguished by operation of the law and that the plaintiffs herein, Peter Mukuna and Irene Wambui, have become entitled to the said land through adverse possession.

b) The Land Registrar is hereby ordered to register the said land in the names of plaintiffs, Peter Mukuna and Irene Wambui.

c) The 1st defendant shall execute all the necessary documents to effect the transfer of the said land in the names of the plaintiffs.

d) In default of (c) above, the Deputy Registrar of this court shall execute all documents necessary for registering the said land in the names of the plaintiffs and the Land Registrar shall dispense with the requirement for consent of the Land Control Board.

e) There shall be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19TH DAY OF NOVEMBER 2021

B M EBOSO

JUDGE

IN THE PRESENCE OF: -

MR KURIA FOR THE PLAINTIFFS

COURT ASSISTANT: LUCY MUTHONI