



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 195 OF 2016

GREGORY GITUMA PLAINTIFF

VERSUS

MRUKWARU M'MWOGONEDEFENDANT

JUDGMENT

1. This suit was filed on 17.10.2016 whereby plaintiff claims entitlement to ½ acre out of the land parcel Nyaki/Thuura/2035 (the suit land) by way of adverse possession. The suit land itself measures 4 ½ acres.
2. The defendant who was duly served did not file any response to the originating summons but he participated in the trial.
3. The plaintiff testified and he also adopted as his evidence his witness statement dated 24.7.2017. He avers that sometime in year 1995 he bought ½ acre out of the suit land from the defendant and he took possession thereof. He proceeded to develop the land building a home with permanent houses and he also cultivated crops. He contends that the suit land is the place he calls home but defendant has been bringing prospective buyers there. He avers that even after the land was sub divided, defendant refused to transfer the land to him.
4. In support of his case, plaintiff produced as his exhibits the following documents:
 - (i) Search certificate.
 - (ii) The land sale agreement.
 - (iii) Receipt from a surveyor.
5. Defendant testified and identified plaintiff as his in law. He admits that he indeed sold the land to the plaintiff but was only paid shs.10,000 leaving a balance of shs.15,000. In cross examination, defendant admitted that he signed the land sale agreement.
6. I have considered all the evidence tendered herein as well as the submissions of the plaintiff. The defendant did not file any response to the originating summons. However, he did participate in the trial and adduced evidence which I have duly considered.
7. The issue for determination is whether plaintiff is entitled to ½ acre out of the suit land via doctrine of Adverse Possession.
8. It is trite law that in a claim of adverse possession the possession of the land must be actual, open, continuous and exclusive for a period of 12 years which is uninterrupted, peaceful and without the consent of the owner of the land. See- **Chevron (K) Ltd vs Harrison Chato wa Shutu (2016) Eklr.**
9. In the case of **Gabriel Mbui vs Mukindia Maranya (1993) eKLR**, the term “Adverse Possession” was judiciously defined as follows:

“It is possible to define adverse possession” more fully, as the non-permissive physical control over land coupled with the intention of doing so by a stranger having actual occupation solely on his own behalf or on behalf of some other person in opposition to, and to the exclusion of all others including the true owner out of possession of that land.....”.
10. It is not disputed that plaintiff entered the suit land due to the agreement between him and the defendant thus there was consent during the entry of the land. However, the agreement was not fully executed and as such the continued occupation of the suit land by the plaintiff after the payment of the Shs.15,000 on 30.5.1995 (see the acknowledgement receipt-P-Exh 3) was without the consent of the owner. To date, plaintiff lives on the suit land, occupying a portion of ½ acres with the knowledge of the defendant.

11. I therefore find that plaintiff has met the criteria of an adverse possessor.

12. The plaintiffs claim is allowed in the following terms:

(i) A declaration is hereby issued to the effect that plaintiff has acquired ½ an acre out of land No. Nyaki/Thuura/2035 by way of adverse possession.

(ii) An order is hereby issued for the defendant to transfer to the plaintiff ½ an acre out of land No. Nyaki/Thuura/2035 failure to which the Deputy Registrar of this court is hereby authorized to sign all requisite documents to effect the said transfer.

(iii) Any orders of inhibition/injunction that may be subsisting on the land are hereby discharged in order to give effect to the implementation of this judgment.

(iv) Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 22ND JANUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Gikonyo holding brief for Kimathi K. for plaintiff

Defendant

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE