



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

E.L.C. CASE NO. 49 OF 2018 (O.S.)

AGRIBINA CIAKATHIA MUNYI.....PLAINTIFF

VERSUS

JAMES MUCHACHI.....DEFENDANT

JUDGEMENT

1. By an originating summons dated 3rd December 2018 brought under **Sections 7, 17 & 38 of the Limitation of Actions Act (Cap. 22), Order 37 Rules 7 & 19 of the Civil Procedure Rules and all enabling provisions of the law**, the Plaintiff sought the following reliefs against the Defendant:

- a) *That the honourable court do declare that the Plaintiff Agribina Ciakathia Munyi has become entitled to parcel of land No. Gaturi/Githimu/776 measuring approximately 2.02 Ha as against the Defendant by virtue of Section 7 of the Limitation of Actions Act on the ground that since 1993 the Plaintiff has openly, peacefully and of right been in occupation of the said parcel of land, that is to say for a period exceeding 12 years preceding the presentation of this summons.*
- b) *That in the alternative there be a declaration that the Defendant is registered as proprietor of parcel of land No. Gaturi/Githimu/776 measuring approximately 2.02 Ha on behalf of and in trust for the plaintiff herein.*
- c) *That costs of the suit be awarded to the Plaintiff.*

2. The said originating summons was based upon the grounds set out in the annexed supporting affidavit sworn by the Plaintiff on 3rd December 2018. The Plaintiff contended that she had been in open, exclusive and uninterrupted possession of *Title No. Gaturi/Githimu/776* (hereafter the *suit property*) for a period exceeding 12 years hence she had acquired adverse possession thereof. She further stated that she had developed the suit property by clearing the rocks thereon and cultivating various crops. She also stated that she had given a portion thereof to his 3 sons who were utilizing and developing the same.

3. The record shows that the Defendant could not be traced for personal service hence the Plaintiff sought leave of court to serve him through substituted service by advertising the originating summons in the Daily Nation newspaper. The record further shows that the Defendant did not enter an appearance to the summons upon service hence the suit proceeded *ex-parte*.

4. When the suit was listed for hearing on 11th November 2019 the Plaintiff testified on her own behalf. She adopted the contents of her witness statement dated 3rd December 2018 and her supporting affidavit of even date as her evidence in chief. She also produced a copy of the green card for the suit property as an exhibit. The Plaintiff also had 4 other witnesses who had filed sworn affidavits in support of the summons. Since the summons was not contested the court directed that the said affidavits be admitted as part of the evidence in support of the Plaintiff's case.

5. The court has considered the pleadings and evidence on record in this suit. The court has also considered the Plaintiff's written submissions on record. The court is of the opinion that the main question for determination herein is whether or not the Plaintiff has demonstrated her claim for adverse possession.

6. The elements of adverse possession were summarized in the case of **Kasuve Vs Mwaani Investments Ltd and 4 Others [2004] 1 KLR 184** as follows:

“...and in order to be entitled to land by adverse possession the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, Wanja Vs Saikwa No. 2 [1984] KLR 284. A title by adverse possession can be acquired under the Limitation of Actions Act for part of the land...”

7. The court has considered the evidence of the Plaintiff and the affidavits sworn by his four (4) witnesses. The court notes that the plaintiff's evidence remains unchallenged. Consequently, the court is inclined to accept the Plaintiff's evidence. The court accepts that she has been in open, peaceful, continuous and exclusive possession of the suit property since 1993. A period of about 25 years had lapsed by the time the Plaintiff filed the originating summons in 2018. Accordingly, the court is satisfied that the Plaintiff has proved her claim to the required standard.

8. The upshot of the foregoing is that the court finds merit in the Plaintiff's originating summons dated 3rd December 2018 hence the same is allowed in the following terms:

a) A declaration be and is hereby issued under Section 38 of the Limitation of Actions Act (Cap. 22) that the Plaintiff, Agribina Ciakathia Munyi, has become entitled to be registered as proprietor of Title NO. Gaturi/Githimu/776 in place of the Defendant, James Muchachi, on account of adverse possession.

b) There shall be no order as to costs.

9. It is so decided.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this **13TH DAY** of **FEBRUARY, 2020**

In the presence of Ms. Rose Njeru for the Plaintiff and in the absence of the Defendant.

Court Assistant: Mr. Muinde

Y.M. ANGIMA

JUDGE

13.02.2020