



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 56 OF 2017 (OS)

CHRISTOPHER MWANGI MUNUHE (*Suing as the personal and legal representative of the Estate of the late LUCY WANJIRU MUNUHE*).....**PLAINTIFF**

VERSUS

GEOFFREY NASUBO.....**DEFENDANT**

JUDGMENT

1. In the Originating Summons dated 31st December, 2014 and amended on 21st September, 2018, the Plaintiff is seeking for the determination of the following issues:

- a. Whether or not the Plaintiff has been in occupation and possession by way of cultivating and building a house and developing the said for a period exceeding twelve (12) years uninterrupted by the Defendant or any other person/owner of the registered parcel of land.**
- b. Whether or not the Plaintiff has acquired resistible interest in the said parcel of land by way of adverse possession.**
- c. Whether or not the Plaintiff is entitled to peaceful use and enjoyment of the said land known as L.R. No. 20604/52 which she has been in possession without any interruption from the Defendant.**

2. The Originating Summons is supported by the Affidavit of the Plaintiff who has deponed that she was a member of Akwana Housing Co-operative Society Limited and that by virtue of her membership, she was allocated parcel of land known as L.R. No. 20604/52 on 12th November, 2000.

3. The Plaintiff deponed that after being allocated the suit property, she fenced it, cultivated the land and built a septic tank, a toilet and put up a site office for construction. According to the Plaintiff, after developing the land, she came to realize that the suit property had been allocated to the Defendant by the officials of Akwana Housing Co-operative Society Limited.

4. The Plaintiff finally deponed that the Defendant showed up on the suit property in the year 2002; that the Defendant never took any steps to have him evicted from the suit property and that the Defendant is aware that he is in possession of the suit property.

5. Other than having developed the suit property, the Plaintiff deponed that she has also been paying the requisite rates and rent for the land to the Mavoko Municipal and that her suit should be allowed.

6. Despite having been served with the Originating Summons by way of advertisement in the Daily Newspaper of 25th November, 2016, the Defendant never entered appearance nor filed a Replying Affidavit in opposition to the Originating Summons. The Summons proceeded for hearing as undefended.

7. The Personal Representative of the Plaintiff, PW1, informed the court that his mother was a member of Akwana Housing Co-operative Society Limited number 0679; that she was allocated the suit land by virtue of her membership and that she took possession of the land after the allocation.

8. According to PW1, her late mother developed the suit property by connecting it to piped water and electricity and also paid the requisite rates and rent. It was the evidence of PW1 that in the year 2002, their caretaker informed them that the Defendant visited the suit property and notified him that the land is his.

9. PW1 stated that since then, the Defendant has never sought to evict him; that the Defendant has always had full knowledge of his mother's occupation of the suit property and that his mother has occupied the suit property for twelve (12) years continuously, peacefully and without the express consent of the Defendant.

10. PW2 stated that between the years 2002 to 2018, he worked on the suit property as a caretaker under the employment of the late Lucy Wanjiru Munuhe; that his duties included securing construction materials on the suit property and that sometimes in the year 2004, the Defendant went to the suit property and enquired from him the person who had developed the land.

11. PW2 informed the court that he told the Defendant that the land is owned by the late Lucy Wanjiru; that he then gave to the Defendant the Plaintiff's cellphone number and that the Defendant has never called or looked for the Plaintiff.

12. In his submissions, the Plaintiff's advocate submitted that the Plaintiff took possession of the suit land in the year 2000; that she developed the suit property and that she lived on the land between the year 2000 until 2018 when she passed on. Counsel submitted that the Plaintiff has brought an action pursuant to the provisions of Section 38(1) of the Limitation of Actions Act and that the suit should be allowed.

13. The evidence before me shows that land known as L.R. No. 20604/52 measuring 0.0297 Ha was registered in favour of the Defendant on 16th July, 1997 as I.R. 73847/1 (*the suit property*).

14. The uncontroverted evidence before me shows that the Plaintiff has been living on the suit property since the year 2000 when the said land was allocated to him by Akwana Housing Co-operative Society Limited. The said Letter of Allotment by Akwana Housing dated 12th November, 2000 was produced by PW1.

15. There is evidence before me showing that the Mavoko Municipal Council, vide a letter dated 18th November, 2003, approved the Plaintiff's building plan for the proposed residential development by the Plaintiff, which building was put up on the suit land. The Plaintiff also connected piped water and electricity on the land. The evidence produced by the Plaintiff shows that she was on the land since the year 2000 continuously, peacefully and without the Defendant's permission.

16. Section 38(1) of the Limitation of Actions Act provides as follows:

“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

17. The Plaintiff's mother has proved on a balance of probabilities that she has been on the suit land for a period of twelve (12) years continuously, peacefully and without the permission of the Defendant. Considering that the Defendant has never dispossessed the Plaintiff, or his mother the suit land since the year 2000, I find that the Plaintiff is entitled to the suit property by way of adverse possession.

18. For those reasons, I allow the Amended Plaintiff's Originating Summons dated 31st December, 2014 and amended on 21st September, 2018 as follows:

a. An order be and is hereby issued that the Plaintiff has acquired by way of adverse possession the whole of L.R. No. 20604/52 situate at Mavoko Municipality.

b. An order be and is hereby issued directing the Chief Land Registrar or the Registrar of Titles to register the Plaintiff as the owner of L.R. No. 20604/52, and issue to the Plaintiff with a Certificate of Title.

c. An order of permanent injunction be and is hereby issued restraining the Defendant either by himself, servants or agents from entering, working or trespassing or interfering with the suit property in any manner whatsoever.

d. Each party to pay his/her own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8TH DAY OF MAY, 2020

O.A. ANGOTE

JUDGE