



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. 155 OF 2014

JOYCE MUKWANJIRU GITIMBU (legal representative of the

Estate of the late JOHANA GITIMBU KARERIA) PLAINTIFF

VERSUS

FRANCIS MUNYUA M'MINYORI DEFENDANT

JUDGMENT

1. The plaintiff filed this suit by an originating summons dated 4/8/2014 claiming entitlement to a portion of land parcel no. KIIRUA/RUIRI/1735 to the tune of 1.8 acres by way of adverse possession.
2. The summons are grounded in the supporting affidavit of Johana Gitimbu Kareria who stated that he bought 1.8 acres out of land parcel no. KIIRUA/RUIRI/1735 vide a sale agreement dated 8/4/1999. He made a further payment of 40,000 and took possession of the land in the year 2000. He thereafter sought the services of a surveyor who marked the boundaries and went ahead to develop the said. He has had peaceful and uninterrupted possession of the land since the year 2000.
3. The defendant was served with the suit documents and the notices for the scheduled dates of pre-trial and hearing, but he failed to defend the suit.
4. The plaintiff died on 25.2.2018 and was substituted with his widow/ legal representative who testified on 4.2.2020. She is **PW1 JOYCE MUKWANJIRU GITIMBU**. She adopted the contents in the affidavit of **JOHANA GITIMBU KARERIA** dated 4/8/2014 as her evidence. She also produced the following documents as her exhibits in support of her case; the agreement for the sale of land dated 8.4.1999, the acknowledgment receipt dated 7.9.2000, surveyor's fees receipt dated 28.6.2001, and the green card for the suit parcel Kiirua/Ruiiri/1735.
5. I have considered the pleadings, the record and the submissions and I find that the issue for determination is **whether the Plaintiff has met the criteria of an adverse possessor in respect of 1.8 Acres of Land Parcel KIIRUA/RUIRI/1735.**
6. In **Celina Muthoni Kithinji v Safiya Binti Swaleh & 8 others [2018] eKLR**, the Court explained the conditions to be met for one to prove an entitlement in adverse possession. The court proceeded to quote various authorities which explain the entitlement and I wish to borrow fully from the decision and capture it as hereunder;

“The requirements for Adverse Possession in Kenya has also been set out in the case of Mbira –v- Gachuhi (2002) IEALR 137 in which the court held that:

.....a person who seeks to acquire title to land by the method of Adverse Possession for the applicable statutory period must prove non-permissive or non-consensual, actual, open, notorious, exclusive and Adverse use by him or those under whom he claims for the statutory prescribed period without interruption....”

7. In the case of **Mtana Lewa –v- Kahindi Ngala Mwangandi- COA MALINDI (2015) eKLR** it was held that:

“Adverse Possession is essentially a situation where a person takes Possession of land, asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya 12 years.”

Also see **Paul Mwangi Gachuru vs. Kamande Nguku (2017) eKLR** cited by the plaintiff.

8. A perusal of the record reveals that the defendant is the registered owner of the suit land. The plaintiff's case is that he entered in to a contract for the sale of 1.8 acres of the suit land on 8/4/1999. It was agreed that he would pay Ksh. 50,000 prior to the signing of the agreement and Ksh 70,000 after finalization and acquisition of the title deed. He however admitted that he further paid Ksh 40,000 after the signing of the sale agreement leaving a balance of Ksh. 30,000. He was to take possession of the suit land in the year 2000, which he did. It therefore appears that the initial entry unto the suit land was as per the agreement hence there was consent from the seller. However, the agreement was not finalized as the plaintiff never completed the balance of the payment and transfer was not effected. The acknowledgment receipt of the last payment bears the date of 7.9.2000. Just like the case of **Paul Mwangi Gachuru vs. Kamande Nguku (supra)**, "**the evidence on record shows that though the entry was permissive in the beginning, the agreement became void after the six months statutory period...**". Thus for purposes of computation of time, the month of April 2001 is applicable. The suit was filed in October 2014 hence the plaintiff is within the requisite period of 12 years.

9. It was the evidence of the plaintiff that their family had been in continuous and uninterrupted possession of 1.8 acres of the suit land since 2000. They even got a surveyor to hive off their portion. This evidence has not been challenged in any way.

10. The only hitch is that the calculation of the acreage appears to have an error. The agreement states that the suit land measures 2.8 acres of which plaintiff was to get 1.8 acres thereof. However, the green card shows that the suit land measures 0.845 Hectares which is equal to 2.088 acres (1 hectare equals 2.471 acres).

11. In light of the above I find that plaintiff's claim is merited and I proceed to give the following orders;

i. It is hereby declared that the plaintiff is entitled to 1.8 acres out of land parcel KIIRUA/RUIRI/1735 by way of adverse possession.

ii. An order is hereby issued for the excision and registration of 1.8 acres out of KIIRUA/RUIRI/1735 in the name of the Plaintiff and the remainder of the land to be registered in the name of defendant.

iii. The production of the original title of the parcel KIIRUA.RUIRI/1735 is hereby dispensed with in the implementation of this judgment.

iv. The Executive officer of this court is hereby authorized to execute all necessary documents to facilitate the subdivision and transfer as set out in this judgment.

v. Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF SEPTEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 22.6.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE