



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC NO. 263 OF 2016 (OS)**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 37 AND 39 OF LIMITATION OF ACTIONS ACT**

**AND**

**IN THE MATTER OF LAND REFERENCE NUMBER 36/II/163**

**1. STANLEY KAMAU NGAHU**

**2. ALEX NJENGA NGAHU**

**3. SAMUEL NDUNGU NGAHU(SUING AS LEGAL REPRESENTATIVES**

**OF KAMAU NGAHU.....PLAINTIFFS**

**VERSUS**

**DIDAR SINGH S/O JAWALA SINGH.....DEFENDANTS**

**JUDGEMENT**

1. This originating summons dated 10<sup>th</sup> March 2016 is brought under order 37 rule 7 of the Civil Procedure Rules, Section 37 and 38 of the Limitation of Actions Act.

2. Let Didar Singh s/o Jawala Singh within 15 days of the date of being served with this originating summons enter appearance to this summons which is issued on the application of Stanley Kamau Ngahu, Alex Njenga Ngahu and Samuel Ndungu Ngahu who claim;

**a. That they have become entitled to LR 36/II/163 Nairobi by adverse possession and that the defendants Title LR 36/II/163 Nairobi has been extinguished in favour of the plaintiffs who have occupied it openly, continuously as of right for over 40 years from 1967 till the date of filing this suit.**

**b. That the defendant be ordered to transfer to the plaintiffs land reference number 36/II/163 Nairobi failing which the Deputy Registrar of the High Court be ordered to execute all transfer documents to effect transfer in favour of the plaintiffs.**

**c. That the defendant do pay the costs of this suit to the plaintiffs.**

3. The originating summons is supported by the affidavit of Stanley Kamau Ngahu, the 1<sup>st</sup> plaintiff, sworn on the 10<sup>th</sup> March 2016.

4. The 1<sup>st</sup> plaintiff has sworn this affidavit on his own behalf and that of the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs. The three plaintiffs are administrators of the Estate of their late father Ngahu Kamau.

5. By an application dated 21<sup>st</sup> May 2018, the plaintiffs sought orders to serve the defendant by substituted service through advertisement in the Daily Nation Newspaper and The Standard Newspaper. The said orders were granted on 23<sup>rd</sup> July 2018 and issued on 3<sup>rd</sup> August 2018. There is an affidavit of service sworn by Arthur Kimamo on 26<sup>th</sup> October 2018. The advertisement appeared on the Daily Nation Newspaper on 31<sup>st</sup> August 2018.

6. Despite the advertisement, the defendant neither entered appearance nor filed any response to the originating summons. The matter then proceeded for formal proof.

7. PW1 Stanley Kamau Ngahu, the 1<sup>st</sup> plaintiff told the court the co-plaintiffs are his brothers. They are also the administrators of the Estate of the late Ngahu Kamau who was their father. The grant of letters of administration intestate was produced as exhibit - P1. He also told the court he has authority to give evidence on behalf of his co-plaintiffs. He produced the documents attached to the supporting affidavit as exhibits in this case.

8. He told the court that the suit property is in Eastleigh, Nairobi. That the three plaintiffs reside on the suit property being LR NO. 36/II/163, Nairobi. Further that they have conducted business on the said premises for more than forty (40) years.

9. They do not pay rent to the defendant nor has he asked them to vacate. They pray that they be registered as owners of the suit property.

10. The plaintiffs' case has not been controverted. They have annexed to the supporting affidavit a copy of the extract of title in the name of the defendant.

11. I have considered the principles governing the claim for adverse possession. They are:-

- a. That the plaintiff must have clear possession of the suit property.
- b. That the occupation of the land/property must be without the consent of the owners of the property.
- c. That the occupation must be uninterrupted for a continuous period of more than twelve (12) years.
- d. That the plaintiff must exhibit an extract copy of the title under litigation.

12. I am guided by the case of **Peter Mberi Michuki vs Samuel Mugo Michuki CA No 22 of 2013** in which the Court of Appeal held that:-

**“this court in Francis Gicharu Kariuki vs Peter Maina Civil Appeal No. 293 of 2002, Nairobi approved the decision of the High Court in the case of Kimani Ruchire vs Swift Rutherfords Co. Ltd [1980] KLR where Kneller, J held....The plaintiffs have not proved that they used this land which they claim as of right nec vi, nec clam, nec precario (no force, no secrecy, no persuasion) so the plaintiff must show that the company had knowledge (or the means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to attempt it by way of recurrent consideration.”**

13. I find that the plaintiffs have satisfied the conditions set out from their claim on adverse possession to succeed. I find that they are entitled to the prayers sought. Accordingly judgment is entered for the plaintiffs as against the defendant as follow:-

- a. That the plaintiffs herein are entitled to be declared as proprietors of Parcel No 36/11/163 Nairobi which they have acquired by adverse possession and that the defendant's title is hereby extinguished.
- b. That the Chief Land Registrar do register the plaintiffs as joint owners of Parcel No. LR No. 36/11/163 and certificate of Title be issued.
- c. That there be no orders as to costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 10<sup>th</sup> day of December 2020.

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Gatumuta for the plaintiffs

No appearance for the Defendant

Court Assistant - Kajuju