



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE 137 OF 2007 (OS)

JUSTUS THAITUMU.....PLAINTIFF

VERSUS

KIBAARA IGUATHU.....1ST DEFENDANT

EZEKIEL M'IBIIRI.....2ND DEFENDANT

HENRY M'AKWALU.....3RD DEFENDANT

M'MWONGO M'ITHULI.....4TH DEFENDANT

JOSECK MITHEU.....5TH DEFENDANT

KAUNGA KIRIKUA.....6TH DEFENDANT

JACOB MUNGANIA KIRIITI.....7TH DEFENDANT

DISTRICT LAND ADJUDICATION & SETTLEMENT

OFFICER (MERU NORTH DISTRICT).....8TH DEFENDANT

THE HON. ATTORNEY GENERAL.....9TH DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit by an originating summons claiming various properties through adverse possession. In his affidavit in support of the said originating summons, the plaintiff set out an historical perspective how the numerous parcels of land were gathered by his grandfather and bequeathed to his mother. The plaintiff also attempted to explain how he acquired the same properties and even settled and embarked on developments therein.

2. The defendants filed replying affidavits basically denying the plaintiffs claim and put him to strict proof thereof. The defendants also deposed in their affidavits that they are all in possession and use of their respective parcels of land. The 8th defendant, through one Ali Chemasuet also filed a replying affidavit in which he gave a detailed explanation on how the suit properties were gathered under nine paragraphs as follows:

(i) "That parcel No. 251 of Iguathu Nkiriti was gathered jointly from Uringu 1 and Uringu 2 under folio 428. Total area demarcated as under 251 is 4.30 acres. At the consolidation period an exchange was made between the defendant and P/No. 705 of M'Muthuri Gikandi of 3.30 acres. There is no record of any committee case of arbitration board case filed against the defendant. The only case filed A/R objection 935 by the plaintiff which was heard exparte and dismissed.

(ii) That parcel No. 308 of Ezekiel M'Ibiiri was gathered as under folio 485, in the names Ibiiri Nkiriti and an application for change of name to Ezekiel M'Iburi alone vide R.E.R objection No. 4088. He gathered a total of 11.10 acres. Among the transfers affected was one of 2.00 acres to Domiziano Ratanya (plaintiffs brother) vide R.E.R objection 1474 to his P/No. 98 P/No. 308 demarcated at suit area was 2.00 acres but subdivided vide A/R objection 509. There is no record of any land committee case or arbitration board case filed against the defendant. A/R objection 935 affected the same parcel but was heard exparte and dismissed as per the attached proceedings.

(iii) That parcel no. 2248 of Henry Akwalu under folio 377 was demarcated 6.18 acres but transferred to Samuel Mutegi Akwalu vide A/R objection 75. He got 7 acres from Ezekiel Mutegi Akwalu vide A/R objection 75. He got 7 acres from Ezekiel M'Ibiiri and 10.00 acres from Iguathu Kiriti among others. There was a dispute over its ownership and ruled to await demarcation to award land, vide, SRMC CC No. 192 of 1985 (Meru). The same piece of land is also affected by a prohibitory order vide civil suit no. 117 of 2000. A/R objection 935 affected the same parcel and was also heard *exparte* as per the proceedings attached.

(iv) That parcel no. 651 of M'Mwongo M'Ithili was gathered and demarcated away from the other parcels in dispute. It measures approximately 0.57 acres. It has not been involved in any land committee or arbitration case. It was also affected by A/R objection 935 which was heard *exparte* and dismissed. The plaintiff has not been in occupation of the suit land.

(v) That P/No. 1650 is registered under Joseck Mitheu. He got 2.75 acres from P/No. 1278 of Silas Kingaru Magiri vide objection 2908. The area demarcated at the suit area is 2.00 acres. There is no record of any case against the said parcel except the A/R objection 935 which was heard *exparte* and dismissed.

(vi) That P/No. 1560 is registered under Kaunga Kirikua. He obtained 1.50 acres from folio 308 of Francis Munjuri vide committee case No. 142/73/74. The suit parcel is mostly covered by the plaintiff's trees and measuring approximately 1.41 at the suit area.

(vii) That P/No. 1169 of Jacob Mungania M'Nkiriti got 1.26 acres from folio 1800 of Thimangu Nkiriti vide objection 1244 less 0.07. So currently measures 1.19 acres. The plaintiff has trees planted on the parcel in dispute.

(viii) That I have attached copies of the proceedings to the objection and copies of tracings of the said plots and they are attached marked "AC1" and "AC2".

(ix) That what is deponed herein above is true to the best of my knowledge".

3. During the hearing of this case, the plaintiff and the defendants testified. The court also ordered the court's executive officer to conduct a scene visit and file a report which was adopted as part of the proceedings herein. The said report dated 6th December 2018 clearly shows that except land parcels No's 1650, all the other parcels of land no's 251, 2248, 1169, 1560 and 308 are occupied by the defendants. None of the parties complained to the report being adopted as part of this court's pleadings.

4. For a claim of adverse possession to accrue, the plaintiff must prove that he has used the land in question which they claim as of right *nec vic nec clam nec precario* (no force, no secrecy, no persuasion).

5. In this case the land in question is under adjudication and the land adjudication officer through his replying affidavit to the plaintiffs claim gave a detailed explanation how the defendants acquired their respective parcels and no. A/R objection were raised. Where A/R objections were raised, the same were determined. The plaintiff did not controvert those averments given on oath. My view is that this suit lack merit incompetent and an abuse of the court process. The same is hereby dismissed. Bearing in mind that costs follow the event and considering costs is also a discretionary power, I order each party to bear her own costs.

6. It is so ordered.

READ, DELIVERED AND SIGNED AT MERU IN THE OPEN COURT THIS 28TH DAY OF FEBRUARY, 2019

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E.C CHERONO - JUDGE

In the presence of:

1. Mr. Muriira holding brief for B.G Kariuki for plaintiff

2. C/A Kananu