



REPUBLIC OF KENYA

IN THE ENVIRONMENT AT LAND COURT AT MERU

CASE NO 161 OF 2013

NELSON KIMATHI MBOROKI.....PLAINTIFF

VERSUS

MONICA NAITORE.....DEFENDANT

JUDGEMENT

1. On 25th June 2013, plaintiff filed an Originating Summons claiming entitlement to land parcel No. Kiirua/Naari/822

(Suitland) by adverse possession. A response was filed there after by defendant who avers that she is the lawful owner of the land.

2. The plaintiff testified as PW1. He also relied on his affidavit sworn on 18th June 2013 and his witness statement dated 31st March 2016 as his evidence. His case is that he bought the suit parcel from the person who was the beneficial owner pursuant to the Sale Agreement dated 16th June 1981 which he annexed as Nkm-1 and that he took possession of the land immediately. He avers that Meru County Council was duly informed of the sale and issued correspondence vide letter dated 23rd January 1982. It then came to his knowledge that the suit property had been transferred to the defendant hence this suit.

3. During his testimony, plaintiff stated that he had stayed on the suit land for one year when defendant moved in and said she is the new owner. But on cross examination, he stated that defendant moved onto the suit land in year 2011. He further stated that when he bought the property from Stephen Kirima, the latter did not have the title to the suit land because the land belonged to Meru County Council.

4. The defendant also relied on her witness statement dated 30th March 2016 and her list of documents filed on 5th April 2009. Her case is that she bought the suit premises from Stephen Kirima in the year 1981 at a consideration price of Kshs. 20,000/=, but Stephen Kirima refused to transfer the suit land prompting her to file Meru SRMCC NO. 93 of 1983. She avers that this suit was settled by consent. The land was initially registered in the name of the Meru County Council but vide Minutes of the Town planning and markets committee dated 9.4.2008, her registration was approved.

5. Defendant claims that she has been in occupation of the suit property since the year 1983. However, Plaintiff would occasionally harass her while she is in the property by making reports to the police. Defendant further claims that plaintiff has never occupied the suit land.

6. For one to succeed in a claim for adverse possession, one must prove that he has been in exclusive continuous occupation of the suit land for a period of at least 12 years, which occupation must be open and notorious and should be without permission of the owner; **nec vi, nec clam, nec precario (no force, no secrecy, no persuasion)**, See- **Nyeri Court of Appeal case No.22 of 2013, Peter Mbiri Michuki vs.Samuel Mugo Michuki**.

7. In **M'mbaoni M'thaara v James Mbaka [2017] eKLR**, the court restated the position taken in **Kweyu versus Omutut [1990] eKLR 709**, where the Court of Appeal stated as follows:

“By adverse possession is meant a possession which is hostile, under a claim or colour of title, actual, open, uninterrupted, notorious, exclusive and continuous. When such possession is continued for the requisite period (12 years), it confers an indefeasible title upon the possessor....”.

8. Defendant has stated in her written statement that she has developed the suit land whereby she has built semi-permanent houses and she also cultivates on the suit land. Plaintiff has not demonstrated any evidence of exclusive occupation of the suit land, like building houses or working on that land. If anything, he admits that defendant started coming onto the land a year after he bought the land. He however made an about turn and during his testimony the plaintiff had identified his place of residence as Munitu. He was not residing on the suit land.

9. I find that plaintiff has not met the qualifications of an adverse possessor. In particular, the element of exclusive and continuous occupation and possession of the suit land is missing.

10. In the final analysis, I find that plaintiff's claim lacks merit. The same is dismissed with costs to defendant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 20TH FEBRUARY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Ngunjiri holding brief for Gatari R. for plaintiff

Plaintiff

Defendant

HON. LUCY. N. MBUGUA

ELC JUDGE