



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT & LAND CASE NO. 10 OF 2016

LOIS CHESIRIKEN PSENJEN.....1ST PLAINTIFF

STEPHEN KIPLANGAT PSENJEN.....2ND PLAINTIFF

VERSUS

FLORENCE KATHLEEN LAW.....DEFENDANT

JUDGMENT

1. The plaintiffs filed the Originating Summons dated **18th January 2016** on the same date. In that Originating Summons they seek the determination of the following questions:

- (a) **Whether the defendant /respondent is the registered owner of LR No 11005 IR 18979.**
- (b) **Whether the plaintiffs /applicants have had possession of 16 acres out of LR No 11005 IR 18979 for over twelve (12) years.**
- (c) **Whether if the plaintiffs/applicants have been in such possession the same has been open, continuous peaceful and uninterrupted for over the said period of time.**
- (e) **Whether the plaintiffs/applicants have acquired ownership of the 16 acres out of LR No 11005 IR 18979 by way of adverse possession.**
- (f) **Whether the plaintiffs /applicants should be declared owners of the 16 acres out of LR No 11005 IR 18979.**
- (g) **Whether the registration of the respondent as proprietor of LR No 11005 IR 18979 should be cancelled and the plaintiffs accordingly registered as owners of the 16 acres they occupy.**
- (h) **Who should bear the costs of the suit?**

2. The summons is supported by the affidavit of the plaintiffs dated 18/1/2016.

3. According to the affidavit of service dated 16/5/2016 sworn by the plaintiff's advocate service was effected by way of substituted service by way of a newspaper advertisement after a successful application was made for orders which granted the same.

4. The defendant, despite that service never filed appearance or defence. The hearing of the suit proceeded ex-parte on the **13th November 2018** when the 1st and the 2nd plaintiffs testified.

5. They adopted their sworn affidavit as their evidence in chief. Their evidence is that the late **Enock Psenjen** bought the land in **1975**, occupied **16** acres, used the same, built a homestead thereon, and applied to have the land subdivided in **1979**. However he died in **December 2012**. No person has ever brought proceedings against the plaintiffs in a court of law over the suit land they occupy. The other portion of the suit land is said to be occupied by another person.

6. PW1 the 2nd plaintiff produced the Grant of Letters of Administration to his late father's estate, the Certificate of Confirmation thereof, a copy of the title to the suit land, a copy of the land board's consent to subdivide the land dated **6/8/1979**, and a death certificate in respect of the late Enock Psenjen. His evidence was corroborated by **PW2** the 1st plaintiff.

7. I have examined the documents presented in evidence by the plaintiffs as well as their pleadings. There is no response from the defendant.

8. The copy of title produced verifies that the land is owned by the defendant.

9. I find that the Land Control Board's consent to subdivide places the furthest date of initial occupation by the late Enock Psenjen to be within the year 1979. The suit was filed some 37 years after that date in 2016, way above the statutory lapse of 12 years required to bar a landowner from instituting proceedings for recovery of land.

10. As to possession I am convinced that there was a plan to subdivide the land into two portions, one of 16 acres and one of 9 acres as stated in the supporting affidavit. The copy of letter of consent is evidence that the land was sold to two persons, Enock Psenjen included. The plaintiffs are members of his family. I am persuaded that they have been and are still in possession of 16 acres out of the land comprised in the said title as there is no evidence to the contrary.

11. I therefore grant the plaintiff judgment in their favour and I issue the following orders:

(a) A declaration that the plaintiffs have had open, continuous peaceful and uninterrupted possession of 16 acres out of LR No 11005 IR 18979 for over twelve (12) years

(b) A declaration that the plaintiffs have acquired ownership of the 16 acres they occupy out of LR No 11005 IR 18979 by way of adverse possession and are entitled to be declared owners of the said 16 acres out of LR No 11005 IR 18979;

(c) That the plaintiffs be registered as proprietors of the 16 acres they occupy within LR No 11005 IR 18979.

(d) That each party shall bear their own costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 13th day of February, 2019.

MWANGI NJOROGE

JUDGE

13/2/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Teti holding brief for Ngeywa for plaintiffs

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

13/2/2019