



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.212 OF 2013

MATHEW CHEBON CHEROGONY.....APPLICANT

VERSUS

KIPKURUI ARAP RONO & 10 OTHERS.....RESPONDENTS

RULING

1. This suit was commenced by way of an Originating Summons filed on 22 February 2013, and taken out pursuant to the provisions of Sections 17, 18, 37 and 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya, and Order 37 Rule 3D of the Civil Procedure Rules. The applicant seeks orders that he be declared owner, through adverse possession, of the land parcels Nakuru Municipality Block 29/1449, 1448, 1447, 1446, 1445, 1078, 1130, and 1078 respectively registered in the name of the respondents.

2. The motion was accompanied by the supporting affidavit of the applicant but no certified extract of the title was annexed despite the provisions of Order 37 Rule 7 (2) which provide as follows :-

(2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.

3. On 29 April 2015, I directed the applicant to comply with the above provision of the law and gave him 14 days to annex the extracts of title. The affidavit was not filed within 14 days but on 5 October 2015, and the applicant did annex the extracts of title to the land parcels claimed. I have observed from the same that entry No. 1 in all the titles reveal that the land was under the proprietorship of the Government of Kenya, the Government being registered as proprietor on 29 March 2000. The next proprietors after the Government of Kenya were as follows ;

No. 1445, Julius C. Bowen proprietor on 28 June 2004;

No. 1446, David Kandagor, proprietor on 28 June 2004;

No. 1448, Elijah Komen Katya, proprietor on 31 August 2004;

No. 1447, Joseph Birir, proprietor on 28 June 2004;

No. 1449, Kipkurui arap Rono, proprietor on 11 October 2010;

No. 1048, John Ndungu, proprietor on 28 June 2004;

No. 1078, Mathey Kibyegon, proprietor on 8 October 2012;

No. 1087, Kiplangat Chumo, proprietor on 28 June 2004;

No. 1130, David Mbugua, proprietor from 9 July 2002;

4. In all these, it would seem that the applicant has not attained the required 12 years to sustain a claim for adverse possession, since, the position of the law is that the period while title is with Government cannot be taken into account. This was affirmed by the Court of Appeal in the case of *Gitu v Ndungu*. That is the reason that I asked the applicant to show cause why the suit should not be dismissed. Indeed it would be a waste of judicial time to proceed to hear a matter where it is apparent on the face of it, that the period required to sustain a case of adverse possession has not been attained.

5. The applicant filed an affidavit sworn by one David Maina Kirungui, who averred inter alia that the suit properties were carved out of the land parcel LR No. 6273, which was owned by Kalenjin Enterprises and not the Government of Kenya. He has stated that the entry in favour of the Government of Kenya is therefore erroneous.

6. In as much as the applicant has not shown me any nexus through cogent documentation that the suit properties emanate from LR No. 6273 and that this land was owned by Kalenjin Enterprises, I am prepared to give him the benefit of doubt. Since he has tabled some sort of explanation, it is only fair that he be given a full hearing so that he can have an opportunity to fully present his case.

7. I will therefore not proceed to summarily dismiss the case but will give directions on its hearing on the day that this ruling is being delivered.

8. The costs of the arguments that have ensued herein will be costs in the cause.

9. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 13th day of February 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Waiganjo present for the plaintiff.

Ms. Nancy Njoroge holding brief for Mr. Oumo for the 8th & 11th respondents.

10th respondent present in person.

No appearance for the other respondents.

Court Assistant :Nelima Jenipher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU