



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 121 OF 2017 (OS)

LUMERIKOL LOITERA.....PLAINTIFF

VERSUS

JOSEPH KIVIKA.....DEFENDANT

JUDGMENT

1. The Originating Summons dated 5/7/2017 and filed in court on 6/7/2017 seeks the following orders:

- (a) That the plaintiff has been in possession of the 6.6 Hectares part of that land known as West Pokot/Kanyarkwat 'B'/32 since the year 1980.
- (b) That the plaintiff has had quiet and uninterrupted possession of the said for a period exceeding 12 years.
- (c) That the plaintiff has continued to be in adverse possession of the said land since 1980.
- (d) That the plaintiff's entry and possession of the said land was done openly and/or publicly.
- (e) That the defendant's title to the suit land has been extinguished.

2. The Originating Summons is supported by the sworn affidavit of the plaintiff, also dated 5/7/2017.

3. The defendant opposed the Originating Summons by filing his sworn affidavit dated 23/10/2017 and the plaintiff filed a response to replying affidavit dated 23/10/2017 and countered the allegations therein.

4. On 17/10/2018 when this matter came up for hearing for the first time hearing did not take place. The court instead issued direction that the hearing would proceed by way of *viva voce* evidence, that the Originating Summons and the supporting affidavit be treated as a plaint and that the replying affidavit as a defence. The further order was that the parties were to testify orally and produce and explain the annexures at the hearing.

5. On 5/3/2019 when the case was slated for hearing, Mr. Lowasikou indicated that the defendant had been served with the hearing notice for that date as shown in the Affidavit of service sworn on 1/3/2019 and filed in court on 4/4/2019, by Samwel Nyang'au Getonto, Court Process Server. The defendant was absent and the hearing proceeded ex-parte. The plaintiff and three other persons testified and adopted their written statements which are in the court record. The plaintiff closed his case and this court marked the defendant's case closed as he was absent. It also ordered that submissions be filed within 14 days and reserved the judgment for 9/4/2019.

6. I have examined the statements of the plaintiff and his witnesses dated 14/12/2017. As the court had ordered the matter to proceed by way of *viva voce* evidence, only the evidence taken down from witnesses is to be considered in his matter.

7. Though the defendant had filed a detailed replying affidavit which was considered to be a defence this court considers that the evidence of the plaintiff and his witnesses was not controverted either in cross examination or by way of evidence adduced in favour of the defendant.

8. In summary the evidence of the plaintiff and his witnesses is that he has lived on the suit land since 1980 and that he has been in quiet and an interrupted possession of 6.6 hectares of land, and therefore he has been in adverse possession thereof for a period exceeding 12 years. That land is West Pokot/Kanyarkwat 'B'/32. In addition they stated that his entry into the suit land and possession thereof were not in secrecy and that the defendant's title to the suit land has now been extinguished by way of adverse possession. His witnesses echoed his evidence in all aspects.

9. Upon an examination of the pleadings I find that the extract from the register was annexed as **Exhibit LL-1** in the supporting affidavit dated 5/7/2017 as required by law. That copy of register shows that the defendant was registered as owner of the suit land on 22/2/1984 and that the suit land measures **6.6 Hectares**. The local chief's letter dated 12/6/2017 confirms that the plaintiff resides on the suit land. A certificate of official search dated 9/10/2018 was produced as **P. Exhibit 2**. Its contents echo those in the certified copy of the green card produced as **P. Exhibit 1**. The original of the chief's letter was also produced as **P. Exhibit 3**.

10. In the light of the documentary evidence produced and the oral testimony of the plaintiff and his witnesses and in the absence of any evidence from the defendant, I find that the plaintiff has proved he has been in peaceful open and an interrupted occupation of the suit land for a period in excess of 12 years, that the occupation is therefore adverse to the defendant's title and that the title has been extinguished.

11. Consequently I enter judgment in favour of the plaintiff against the defendant and I issue the following orders:

(a) **That the plaintiff's entry into and possession of the said land was done openly and publicly.**

(b) **A declaration that the plaintiff has been in quiet open and uninterrupted possession of the 6.6 Hectares part of that land known as West Pokot/Kanyarkwat 'B'/32 since the year 1980 and therefore for a period exceeding 12 years.**

(c) **That the defendant's title to the suit land has been extinguished.**

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

Dated, signed and delivered at Kitale on this 9th day of April, 2019.

MWANGI NJOROGE

JUDGE

9/4/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Lowasikou for plaintiff

N/A for defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

9/04/2019