



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC NO. 133 OF 2004 (OS)**

**GEORGE RINTARI MWINGIRWA.....APPLICANT**

**VS**

**COUNTY GOVERNMENT OF MERU.....RESPONDENT**

**JUDGMENT**

1. By an Originating Summons dated 8/9/14 and filed on even date, the Applicant sued the Respondent seeking an ownership right by way of adverse possession and posed the following questions for determination;

- a. Has the Applicant acquired Plot NO. 4 MIATHENE MARKET by adverse possession?
- b. Is the Applicant entitled to be registered as the proprietor of PLOT NO. 4 MIATHENE MARKET?
- c. Should the Deputy Registrar of this Court be empowered and authorized to execute the necessary documents to effect registration of PLOT NO. 4 MIATHENE MARKET into the Plaintiff's case.
- d. Who should bear the costs of this suit?

2. The Applicant claims that by an agreement in writing dated 15/7/1996, he bought Plot No 4 "B" Miathene Market from one Isaya M'Etamwari at a consideration of Kshs. 22,000/= which he paid in full. That later the vendor approached him and informed him that he had some family problems and sold to him Plot No. 4 "A" which he then combined to Plot 4 "B" and fenced it off and proceeded to make developments thereon. He claims that unfortunately the vendor passed on thereafter before transferring to him the entire parcel land known as Plot 4 (a combination of 4A AND 4B) MIATHENE MARKET since 1996. He claims to have approached the Respondent through its predecessor in order to transfer the plot to him but no action was taken. Further that the previous owner of the plot had no known relatives as his wife and children are all dead. He believes that he is entitled to be declared the owner of the plot under the doctrine of adverse possession. He annexed a sale agreement dated 15/7/1996.

3. The Respondent through its Chief Legal Officer one Thurania Atheru filed a Replying Affidavit in which he deposes that the Respondent/Respondent was not a party to the alleged sale agreement. That procedures for transfers of lands must be adhered to and they cannot act on *ad hoc* requests to transfer lands in transactions they were not party to. He challenged the contention by the Applicant that the previous owner of the suit land is deceased and has no relative. He faulted the Applicant for not supporting his averments with documentary evidence in form of a death certificate. He accused the Applicant for being indolent for failing to follow up for transfer of the land to his name at the right time. He opines that the Plaintiff's claim does not fall in the realm of Adverse Possession.

4. In his Witness Statement the Applicant claims to have learnt that Plot No. 4 "B" had been sold to a third party but after confronting the vendor, Mr. Isaya denied having sold the suit land to Peter Amiraki. That Peter Amiraki's wife later sued Mr. Isaya claiming that her late husband had purchased Plot 4 "B" and after the death of Mr. Isaya the Plot was given to Mr. Amiraki's wife by the Council. The Applicant claims to have sued the son of Mr. Isaya one Peter Muthoni to the Njuki Ncheke Council of Elders in respect to parcel No 4 "A" and they ruled in favour of the Plaintiff.

5. The Respondent filed a Witness Statement dated 1/1/2018 by one Jackson Mwirigi the Land Administration officer of the County Government of Meru who explains that the lands register at the County Government shows that Plot No. 4 Miathene market was jointly owned by Isayah M' Twamwari and Peter M'Imiranki and they partitioned the said plot into two plots namely Plot No. 4A owned by Isayah M' Twamwari and Plot No. 4B owned by Peter M'Imiranki. Peter M'Imiranki later sold his plot No. 4B to Stanley Kubere Kabira while plot No. 4A remained in the names of Isayah M' Twamwari. He avers that there are no records of any transactions/dealings between the Applicant and the said Isayah M' Twamwari. He suspects that the land cannot be in vacant possession owing to the various transactions recorded. He claims that since the suit land relates to property of a deceased person it cannot be subject to Adverse Possession and contends that the Applicant has not invoked the right procedure to move the Court. He contends that the suit as framed does not disclose any cause of action against the Respondent hence it's frivolous and should be dismissed.

6. At the hearing PW1- the Applicant stated that he bought plot parcel No. 4”B” in 1996 from Isaya M’Twamwari. That the plot was shown to him by the Respondent and he took possession of it in 1996 and has been using it as a shop. That he has never been asked to vacate. He states that his claim is in respect to plot 4’A’ and produced sale agreement dated 15/7/1996, minutes of Njuri Ncheke dated 12/5/2017.

7. DW1, Jackson Muriungi adopted his Witness Statement and clarified that the register was at 2012 did not have the previous records. He could not identify the plot on the ground. There were no records in respect to transaction between Applicant and Mr. Isaya.

8. Parties were directed to file submissions but it is only the Applicant who filed very brief submissions.

9. The Applicant submits that he has been in occupation of Plot No. 4 Miathene market since 1996 which he maintains was sold to the him by one Isaya M’Twamwari(deceased). He contends that though the plot does not belong to the Respondent, the Respondent retains the responsibility to transfer the suit land to the Applicant by issuing the necessary approvals. He claims that the Respondent has failed to discharge that responsibility hence entitling the Applicant to claim under Adverse Possession. He is convinced that he has proved his case on a balance of probability and prays for judgement to be entered as prayed.

10. The Respondent is not the registered owner of the suit land. There is evidence on record that there is indeed a registered owner to the suit land who purchased it from the original owner. DW1 testified that there was change of ownership to Stanley Kabure Kabira as per Min No. TP/M70/2012 B (a) 15 as per the records at the Council’s office it is thus evident that there is a registered owner to the suit land. The claim for Adverse Possession should be brought against a registered owner so much so that Kabure should have been enjoined in the suit. The gist of a claim for adverse possession seeks to extinguish a title of a registered owner. That the failure to bring the claim against the registered owner is fatal, the claim cannot be sustained in the form it is framed.

11. Having considered the pleadings, the evidence, the Written Submissions where applicable and all the material placed before me in this case, the issue for determination is whether the Originating Summons as filed are properly before this Court.

12. Section 38 of the Limitation of Actions Act cap 22 provides as follows;

“Registration of title to land or easement acquired under Act (1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

13. In this case the plaintiff’s claim is that he purchased Plot 4A from one Isaya M’Etamwari for the sum of Kshs. 15,000/-. He did not place any evidence in form of an agreement for sale and or transfer of land before the Court to proof his averments. There is therefore no proof of purchase of the suit land and therefore his claim having been anchored on a right of purchase fails.

14. From the evidence of the Jackson Mwirigi the Land Administration officer of the County Government of Meru he explained that Plot No. 4 Miathene market was jointly owned by Isaiah M’ Twamwari and Peter M’Imiranki and they partitioned the said plot into two plots namely Plot No. 4A owned by Isaiah M’ Twamwari and Plot No. 4B owned by Peter M’Imiranki. Peter M’Imiranki later sold his plot No. 4B to Stanley Kubere Kabira while plot No. 4A remained in the names of Isaiah M’ Twamwari. It is therefore clear that the Respondent has no interest in the suit land. The Respondent is therefore not suited in this case and the suit is fatally incompetent.

15. The Applicant deponed in his supporting affidavit filed on the 8/9/2014 under para 6 that the said Isaya M’Etamwari is deceased, has no known relatives and his wife and children are all dead. He did not show evidence of death in form of a death certificate to support his averments. On the 12/10/17 he filed a Witness Statement in which under para 10 he stated as follows;

“That I sued the son of the deceased one Peter Muthomi to the Njuri Ncheke Council of Elders so that the parcel of land Plot 4A can be transferred in my name”.

The above statement shows the Applicant lied on oath in making this averment and he is therefore not a credible witness even unto himself and this Court. Further he stated in evidence that he has not petitioned for letters of grant of administration in the estate of the said Isaya M’Etamwari.

16. In the upshot the Plaintiff’s claim fails and it is dismissed with costs to the Respondent.

**Orders accordingly.**

**DELIVERED, DATED AND SIGNED AT MERU THIS DAY OF 8<sup>TH</sup> APRIL 2019.**

**J. G. KEMEI**

**JUDGE**

**In the presence of;**

C/A Mutwiri

