



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 22 OF 2015

SAMMY MUTUA MUSWII.....PLAINTIFF

VERSUS

NJOKI ELIZABETH WAMBUGU.....DEFENDANT

JUDGMENT

1. In the undated Originating Summons filed on 23rd February, 2015, the Plaintiff is seeking for the following reliefs:

a. An order of declaration that the Plaintiff/Applicant has acquired by adverse possession the parcel of land known as I.R. 34879 – L.R. No. 337/488 in the Mavoko Municipality in the Republic of Kenya.

b. An order directing the Registrar of Titles to transfer to the Plaintiff the ownership of the said land which the Defendant has been holding for the Plaintiff as a Trustee.

2. The Originating Summons is supported by the Affidavit of the Plaintiff who has deponed that he purchased parcel of land known as L.R. No. 337/445, Athi River from the Defendant; that he paid the Defendant the total purchase price of Kshs. 31,000 and that he has been in possession of the suit land since 9th July, 1988.

3. According to the Plaintiff, the Defendant gave him the original title document and did not obtain the requisite consents to transfer the suit land to him; that he has lived on the suit land peacefully since 9th July, 1988 and that he has developed a timber house, a toilet and an iron sheet structure which he has leased to tenants.

4. Having been in occupation of the suit land peaceful, continuously and to the exclusion of the registered proprietor, the Plaintiff has deponed that he is entitled to the land.

5. Although the Defendant was served with the Originating Summons by way of advertisement in the Daily Nation newspaper of 9th January, 2018, she never filed a Replying Affidavit.

6. The Originating Summons proceeded as undefended by way of written submissions. The submissions by the Plaintiff, which I have considered, reiterated the Plaintiff's depositions which I have already summarized above.

7. The Plaintiff exhibited on his Affidavit an incomplete and uncertified copy of the grant in respect of land known as L.R. No. 337/488. Although the first page of the title shows that the land was registered in favour of the Defendant, the page showing when the said registration was done is missing. I need, from the copy of the Grant exhibited by the Plaintiff, it is not clear if the Defendant is currently the registered proprietor of the suit.

8. Order 37 Rule 7(2) of the Civil Procedure Rules provides 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.”

9. In the absence of a complete certified extract of title before me, I am unable to determine if indeed the Defendant is still the registered proprietor of the suit land, or if she even had the legal capacity to sell to the Plaintiff the suit land in the first place.

10. On that ground alone, the court cannot determine on merit, if indeed the Plaintiff is entitled to the suit land by way of adverse possession.

11. For that reason, the suit is hereby struck out with no order as to costs. The Plaintiff is at liberty to file a fresh suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 24TH DAY OF MAY, 2019.

O.A. ANGOTE

JUDGE