



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC NO. 783 OF 2012 (OS)**

**SERAH NJERI MUIGAI.....PLAINTIFF**

**VERSUS**

**GEORGE MWANIKI IRARA.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the Defendant seeking orders that she had acquired LR No. Kabete/Nyathuna/T. 224 (suit property) through adverse possession. The Defendant was registered as owner of the suit property on 8<sup>th</sup> June, 1994. Prior to the registration of the suit property in the Defendant's name, the same was registered in the name of Native Land Trust Board which was the predecessor of Kiambu County Council.

2. The Plaintiff testified that she had been staying with her mother on the suit property since 1959. When her mother died, the Town Council of Kikuyu within which the suit property was situated allocated the suit property to the Plaintiff vide minutes of a meeting held on 1<sup>st</sup> December, 1993. The Town Council of Kikuyu noted that the suit property had been earmarked for allocation to the Plaintiff's mother but that since the Plaintiff's mother died before the process of allocation was formalized, the suit property was allocated to the Plaintiff.

3. In 1994, the suit property which had been allocated to the Plaintiff was again irregularly allocated to the Defendant, who proceeded to have the property registered in his name on 8<sup>th</sup> June, 1994. The Plaintiff filed Nairobi HCCC No. 2399 of 1994 against the Defendant over the suit property but this suit was dismissed for want of prosecution on 19<sup>th</sup> July, 2001. The Plaintiff stated that she has since lived on the suit property peacefully without any interruption by the Defendant. The Plaintiff further testified that the only time the Defendant attempted to evict her was in 2012 when the Defendant destroyed her corrugated iron sheets house.

4. The Plaintiff testified that the Defendant has never filed any suit seeking to evict her from the suit property and that she has since acquired the same through adverse possession. The Plaintiff called PW2 John Chege Mwaura who confirmed that the Plaintiff had been staying on the suit property with her mother since 1959 and that after the death of the Plaintiff's mother the Plaintiff has been staying on the suit property since then.

5. The Defendant testified that the suit property was given to him by his mother. He testified that his mother had land which was adjacent to a church. The land was given to the church. When an alternative plot was found, his mother was given the suit property. The Defendant later processed title. When the Plaintiff realized that he had obtained title to the suit property, she came and built a structure on the suit property. The Defendant testified that the Plaintiff filed a suit against him in 1994 whereby he was restrained from interfering with the suit property.

6. I have considered the Plaintiffs evidence as well as the evidence of the Defendant. I have also considered the submissions by the Plaintiff. Though the Defendant was granted leave to file his submissions on 20<sup>th</sup> March 2019, that was not done and if the submissions were filed, then the same are not in the Court file. A copy of the extract of title to the suit property shows that the suit property was registered in the name of Native Land Trust Board on 4<sup>th</sup> August, 1959. The land was later transferred to the Defendant on 8<sup>th</sup> June, 1994.

7. The law is that the period of limitation does not run where a property is registered in the name of the Government, Local Authority or any body associated with a Government. In the instant case, if there is any period of limitation to be considered against the Defendant, that period can only run from 8<sup>th</sup> June, 1994 when the Defendant became the registered owner. The only issue for determination in this suit is whether the Plaintiff has been in peaceful and uninterrupted period of 12 years from 8<sup>th</sup> June, 1994.

8. The evidence which was adduced herein is that in 1994, the Plaintiff filed a suit against the Defendant seeking to assert her right to the suit property. This suit was however dismissed for want of prosecution on 19<sup>th</sup> July, 2001. The evidence on record is that the Defendant has never filed any suit against the Plaintiff seeking to assert his right to the property. During cross-examination, the Defendant stated that he had not filed a suit against the Plaintiff because his wife had a mental illness and that he was taking care of his children. The only attempt the Defendant made to evict the Plaintiff was in 2012 when he destroyed the Plaintiffs house. The Plaintiff did not however move out of the suit property.

9. It is therefore clear that as at the time the Plaintiff filed this suit claiming adverse possession, the Plaintiff had been living on the suit property peacefully with the knowledge of the Defendant for a period of over twelve years from 8<sup>th</sup> June, 1994 when the Defendant became the registered owner. If it were the Defendant who filed a suit against the Plaintiff in 1994, then time for purposes of limitation would have stopped running. The filing of the 1994 suit did not stop time from running because the suit was filed by the Plaintiff.

10. The title of the Defendant was extinguished after 2006 when the twelve year period elapsed from the time the Defendant was registered as owner of the suit property. The occupation by the Plaintiff was open and without invitation by the Defendant. The occupation was never

interrupted for a period of twelve years from 8<sup>th</sup> June, 1994. In the case of *Gabriel Mbui –vs- Mukindia Maranya [1993]eKLR* Justice Kuloba set out what a claimant by way of adverse possession has to prove to succeed in his or her claim. In the instant case, the Plaintiff has proved all the essential requirements for one to acquire land by way of adverse possession. The attempted interruption by the Defendant which came in 2012 came too late and did not stop time from running as the Plaintiff was never evicted from the suit property. I therefore find that the Plaintiff has proved her claim to the required standards. I therefore find that the Defendant's title to LR No. Kabete/Nyathuna/T.224 has been extinguished. The title should now be registered in the name of the Plaintiff. The Deputy Registrar of this Court is directed to ensure that LR No. Kabete/Nyathuna/T. 224 is registered in the name of the Plaintiff. The Defendant shall pay costs of this suit to the Plaintiff.

Dated, Signed and delivered at **Nairobi** on this **27<sup>th</sup>** day of **June, 2019**.

**E.O.OBAGA**

**JUDGE**

In the presence of M/s Mwaura for Mr. Mwaura Shairi for Plaintiff and Mr. Gonasha for M/s Muchira for Defendant.

Court Assistant Hilda.