



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1308 OF 2016

IN THE MATTER OF NAIROBI BLOCK 139/136

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND

IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA

FLORENCE NJOKI NDUNGU.....APPLICANT

=VERSUS=

MARARUI FARMERS COMPANY LIMITED..... RESPONDENT

JUDGMENT

1. This is the originating summons brought under order 37 of the Civil Procedure Rules, 2010, Section 38 of the Limitation of Actions Act, Cap 22 Laws of Kenya Land Registration Act, Land Act and all enabling provisions of the law.

2. It seeks orders:-

1. *Spent*

2. *Spent*

3. *Spent*

4. *Spent*

5. *That the title to the whole of Land Parcel Number Nairobi Block 139/136 situated in Nairobi County be deemed to have been extinguished through adverse possession by the plaintiff.*

6. *That the costs of this application to provided for.*

10. The grounds are on the face of the application and are set out in paragraphs (a) to (g).

(a) That the applicant has without permission of the respondent been in exclusive quite, actual, open and uninterrupted possession of an 80ft by 40ft portion of Land Parcel Number Nairobi Block 139/136 since the year 2001 and has acquired beneficial interest under the doctrine of adverse possession.

(b) That the applicant has been cultivating and planting crops on the suit parcel of land for the last sixteen (16) years without any interference from the respondent.

(c) That the respondent has not laid any claim over Land Title Number Nairobi Block 139/139 and has never questioned the

applicant's occupation of the said land.

(d) That the suit property Land Title Number Nairobi Block 139/136 has accumulated Land Rates amounting to Kshs.833,184.00

(e) That the suit land may be repossessed by Nairobi City County for nonpayment of land rents.

(f) That the suit land may be repossessed by Nairobi City County for non payment of land rents.

(g) That the applicant will suffer loss and damage if she is evicted from the land or if the land is sold off and thus loss of the rights over it.

(h) That it is only fair and equitable to preserve the suit parcel of land to enable the applicant to ventilate her cause.

11. The originating summons is supported by the affidavit of Florence Njoki Ndungu, the applicant herein sworn on the 25th October 2016.

12. Upon being served with the originating summons, the respondent instructed the firm of M/s Mugambi Kariuki & Company Advocates who filed a notice of appointment of Advocates on 21st November 2018. The respondent did not file any response to the originating summons. On the 18th May 2017, the respondent was given before the close of business of that 18th May 2017 to file a replying affidavit. The originating summons was then fixed for hearing on 25th July 2017. On the 25th July 2017, the respondent had not filed their response and it was given the final chance. The matter was adjourned to 1st November 2017. On the 1st November 2017, the respondent did not appear and the applicant was given thirty (30) days to put in their written submission. On the 23rd January 2018 the respondent still did not appear despite being served and a judgment date was given.

13. The applicant brings this claim under Section 38 of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya. Order 37 Rule 7 of the Civil Procedure Rules provides that:-

“An application under section 38 of the Limitation of Actions Act shall be made by originating summons.

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. The court shall direct on whom and in what manner the summons shall be served”

14. I have gone through the originating summons dated 25th October 2017. I note that the same is supported by the affidavit of Florence Njoki Ndung'u, the applicant herein. She has annexed several photographs of what appears to be cultivated land. She has also annexed a property rates payment request from Nairobi City County to MF Co Ltd for Block 139/136. She has failed to annex a certified extract of the title.

15. For all intents and purposes a payment request cannot be taken as proof of ownership. It is not even clear if MF Co. Limited refers Murarui Farmers Co-operative Limited. Order 37 rule 7 (2) is set in mandatory terms. A certified extract of title must be annexed to the affidavit.

16. Failure to do so is fatal to the applicant's case. The applicant may have been in occupation from the year 2001. However, failure to confirm the registered proprietor of the suit property cannot afford her the orders sought. Though the claim is undefended it must fail.

17. In conclusion, I find that the applicant has failed to establish her claim to the land through adverse possession and the originating summons is dismissed. I make no orders as to costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 31ST day of JULY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Migiro for Mr. Maina for the Plaintiff

No appearance e for the Defendant

Kajuju - Court Assistant