



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 462 OF 2017**

**FORMERLY KISII ELC NO. 989 OF 2016**

**WILLIAM KIPYEGON.....PLAINTIFF**

**-VERSUS-**

**KOKEN OLE SAMUNIA.....DEFENDANT**

**JUDGEMENT**

The Plaintiff commenced the suit herein by way of Originating Summons dated 7<sup>th</sup> September, 2012 wherein he sought the following orders:

1. A Declaration that the Defendant's right to recover a portion measuring 8 acres of LR NO. TRANS MARA/KIMINTET C/69 is barred under the Limitations of Actions Act Cap 22 of Laws of Kenya, and his title over a portion in occupation/use of the Plaintiff thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation/use and possession of the aforesaid portion of 8 acres for a period exceeding 12 years.
2. That there be an order that the Land Registrar Trans Mara District do register the Plaintiff as the proprietor of the portion measuring 8 acres of LR. No. TRANS MARA/KIMINTET C/69, in place of the Defendant and/or the register thereof be rectified to reflect the Plaintiff's ownership of the aforesaid 8 acres under his use and current continued occupation.
3. That the Defendant herein be ordered to execute all the requisite papers necessary to have the Plaintiff registered as owner of the portion of LR. No. TRANS MARA/KIMINTET C/69, measuring 8 acres, decreed by the court, in default, the Deputy Registrar and/or Court Executive Officer be at liberty to execute all such necessary documents to give effect to the judgement and/or decree of the court.
4. That this court be pleased to issue a permanent order of injunction against the Defendant, his agents, servants and/or employees from whatsoever manner, interfering with the Plaintiff's occupation and/or use over a portion of land otherwise known as LR. No. TRANS MARA/KIMINTET C/69.
5. Costs of this Originating Summons be borne by the Defendant.

The suit was consolidated with Originating Summons in Narok Environment and Land Court Suits No. 556/17, 572/17 and 471/17. The Originating Summons was based on the grounds that the Plaintiff has peacefully and openly occupied and cultivated a portion of Land Parcel LR. No. TRANS MARA/KIMINTET C/69 (hereinafter referred to as the suit land) measuring 2.8 hectares for uninterrupted duration exceeding 12 years with effect from 1996 and has thus acquired ownership by way of prescription and/or adverse possession and that for the period hereinabove stated he had openly, continuously and without interruption occupied, cultivated and utilized the said portion of the suit land.

The Plaintiff further contended that his entry and continued use of the land was pursuant to a land sale agreement between the Plaintiff's mother Grace Chelangat and the Defendant which agreement was executed in 1996 and they took occupation and possession to date peacefully and without any interruptions. The Plaintiff states that despite the aforesaid, the Defendant is the registered owner of the suit land and has threatened the Plaintiff with eviction.

The Plaintiff in his supporting affidavit filed together with the Originating Summons averred that the portion he is claiming under adverse possession was sold to his mother and upon the sale they entered into the suit land and they have been in continuous occupation and possession of the land. He contended that their occupation has been actual, continuous and uninterrupted and hence it shall serve the interest of justice that the Application be allowed. He states that the Defendant has reneged on the agreement of sale and has threatened him and his

family with eviction unless they paid extra monies.

The Application was opposed by the Respondent who filed a replying affidavit sworn on 10<sup>th</sup> October, 2012 and filed in court on the same date and he states that the Originating Summons is inept, bad in law and an abuse of the process of the court and further averred that the Plaintiff has no locus standi of his late mother with regard to the claim of the parcel of land. He stated that the Plaintiff was not privy to the agreement and that the Plaintiff entered into the land as a licensee for a period of six years and that the deceased had breached the agreement when she failed to clear the balance of kshs. 7,000/- and moreover the said agreement is not enforceable as a result of limitations.

During the hearing of the Originating Summons the Plaintiff testified and called 2 witnesses. In his evidence in chief the Plaintiff stated that he knew the Defendant as he sold his mother a parcel of land measuring about an acre on 2<sup>nd</sup> August, 1998 and that he produced a sale agreement dated 16<sup>th</sup> August, 1998 which was signed by his mother the late Grace Chelangat, the Defendant and the Defendant's wife Nancy Samuria and also a certificate of official search. PW2 stated that they have lived on land for long and had adopted the statement that he filed and he also produced a certificate of search. He states that he was sold 5.3 acres of land.

PW 3 in his evidence in chief stated that he bought the parcel he is occupying from the Defendant and that he had lived on the land since 1998 and he knew the boundaries and his parcel measures about 2.8 acres.

During the hearing the Defendant never testified even though he was satisfactorily served and the hearing dates taken by consent of the parties. In the circumstances I will rely on the Replying Affidavit which was filed in opposition to the Originating Summons.

I have carefully read the Originating Summons and the Replying Affidavit and I have heard the testimonies of the witnesses in the matter and the issues for the court to determine are whether: -

1. There was a valid sale agreement between the Plaintiff and the Defendant.
2. Whether the Plaintiff had extinguished the Defendant's claim to the land and his interest to the land is adverse to those of the Defendant
3. What remedies is the court to grant

On whether there was a valid sale agreement the Plaintiff contends that the sale agreement was entered into between the Plaintiff's late mother and the Defendant and that the Plaintiff's mother had violated the terms of the sale agreement by failing to pay the balance of the purchase price. The Plaintiff had proved the sale agreement save for two contradictory paragraphs on the replying affidavit in which in paragraph 8 he admits there was a sale agreement and in paragraph 14 denies the same. The Defendant has not controverted the evidence of the Plaintiff. In early event the sale agreement was what caused the Plaintiff and by extension his mother to live and occupy the land and the Defendant despite his averment of breach of the terms of agreement had not caused to obtain possession of the suit from the Plaintiff through known lawful means and in the circumstances the Plaintiff had lived and acquired possession and occupation of land for uninterrupted period exceeding over 12 years and I thus find that the sale agreement between the parties was valid and that consequently the Plaintiff had acquired the suit land by adverse possession.

From the foregoing I find that the Plaintiff has proved his claim on a balance of probabilities and I thus enter judgement for the Plaintiff against the Defendant in the following terms: -

1. A Declaration do issue that the Defendant's to recover a portion measuring 8 acres of LR NO. TRANS MARA/KIMINTET C/69 is barred under the Limitations of Actions Act Cap 22 of Laws of Kenya, and his title over a portion in occupation/use of the Plaintiff thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation/use and possession of the aforesaid portion of 8 acres for a period exceeding 12 years.
2. That an order do issue that the Land Registrar Trans Mara District do register the Plaintiff as the proprietor of the portion measuring 8 acres of LR. No. TRANS MARA/KIMINTET C/69, in place of the Defendant and/or the register thereof be rectified to reflect the Plaintiff's ownership of the aforesaid 8 acres under his use and current continued occupation.
3. That the Defendant herein is ordered to execute all the requisite papers necessary to have the Plaintiff registered as owner of the portion of LR. No. TRANS MARA/KIMINTET C/69, measuring 8 acres, decreed by the court, in default, the Deputy Registrar and/or court Executive Officer be at liberty to execute all such necessary documents to give effect to the judgement and/or decree of the court.
4. That a permanent order of injunction do issue against the Defendant, his agents, servants and/or employees from whatsoever manner, from interfering with the Plaintiff's occupation and/or use over a portion of land otherwise known as LR. No. TRANS MARA/KIMINTET C/69.
5. Costs of this Originating Summons be borne by the Defendant.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 30<sup>th</sup> day of July, 2019**

**Mohammed Kulow**

**Judge**

**30/7/19**

In the presence of: -

Mr Otieno for the Plaintiff

N/A for the Defendant

CA:Chuma/Kimiriny