



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO.409 OF 2017**

**FORMERLY NAKURU ELC CAUSE NO. 186 OF 2012**

**MIRIAM MARITIM.....PLAINTIFF**

**VERSUS**

**MARGARET W. NGUGI.....DEFENDANT**

**JUDGEMENT**

The Plaintiff had commenced the suit herein by way of an Originating Summon brought under Section 27 and 28 of the Limitations of Actions Act Cap 22 of the Laws of Kenya and under Order 37(7) and 8 of the Civil Procedure Rules and sought for determination of the following questions: -

1. Whether the Plaintiff has been in adverse possession of a portion measuring approximately 3.7 acres from the Parcel of land known as Cis Mara/Ololulunga/171 but now parcel No. Cis Mara /Ololulunga/12649 registered in the name of the Defendant, for a period of over 12 years.
2. Whether the Plaintiff is entitled to be registered as the proprietor of a portion measuring approximately 3.7 acres from parcel No. Cis Mara/Ololulunga/171 but now Parcel No. Cis Mara/Ololulunga/12649 as per Section 38 of the Limitation of Actions Act, Cap 22 Laws of Kenya.
3. Whether the court should make an order that the Plaintiff be registered as the proprietor of a portion measuring approximately 3.7 acres from parcel No. Cis Mara/Ololulunga/171 but now parcel No. Cis Mara/Ololulunga/12649 in place of the Defendant.
4. Who should pay for the costs of the suit.

The Plaintiff claims is based on the grounds that he has been in continuous open, peaceful and uninterrupted occupation and enjoyment of Parcel No. Cis Mara/Ololulunga/171 and now No. Cis Mara/Ololulunga/12649 which is registered in the Defendant's name for over 12 years and that the Plaintiff continuous occupation of approximately 3.7 acres of the suit parcel has dispossessed him of the same and that his ownership discontinued and subsequently the plaintiff having extensively developed the same.

The Originating Summons was also supported by the Affidavit of Miriam Maritim the Plaintiff herein in which she stated that one Daniel Ngugi (deceased) the husband of the Defendant herein was the registered owner of Land Parcel No. Cis Mara/Ololulunga/171 but on the 3<sup>rd</sup> August, 1995 she purchased a portion of the suit land at a consideration of kshs. 22,500/- but being unable to raise the aforesaid sum she raised a sum of kshs. 82,500/- paid by way of instalments which entitled her to approximately 3.7 acres and that she has been in actual possession and occupation of the aforesaid parcel.

In her Affidavit she averred that the land was sub-divided but in 2008 the Defendant transferred in her name the entire parcel registered in her name under Land Parcel No. Cis Mara/Ololulunga/12649. It is her averment that she has enjoyed uninterrupted occupation of the land for a period of 12 years and the same has been continuous and consequently dispossessed the Defendant of the land and at present has extensively developed the land.

The Defendant opposed the Application and filed a replying affidavit in which she stated that she is the widow of the late David Ngugi who was the owner of land parcel No. CIS MARA/OLOLULUNGA/171 she stated that her and the extended members of the family have been occupying the aforesaid parcel until when they were displaced during the clashes of 1998 and that the Plaintiff never occupied the land as a purchaser. She said the Plaintiff lives on about an acre of the land and that neither her or her late husband allowed the plaintiff to live on the land.

The Defendant further contended that the Sale Agreement being relied on by the Plaintiff in her opinion is a forgery and that it was only after her husband died that the Plaintiff laid claim on the property.

When the Originating Summons came for directions, the court directed that the same be heard by way of viva voce evidence and both the Plaintiff and the Defendant testified and each called a witness.

The Plaintiff in her oral evidence stated that she will rely on the statement she filed in court and testified that she purchased the suit land for a consideration of kshs. 82,500/- and that she couldn't remember the exact Land Reference No. She moved into the land and started building on it after the portion she purchased was identified to her. She produced a copy of a sale agreement. She further stated that it was only after the death of the Defendant's husband that the Defendant attempted to evict her.

On cross-examination she stated that she lives on about 0.4 acres and that there are other people who live on the suit land but she did not get her title form the deceased but was shown the boundaries and there are fencing poles to determine her boundary. She stated that she is claiming the portion she lives and occupies.

PW 2 Racheal Chepkoech in her evidence stated that she is the daughter of the Plaintiff who is her mother. That she bought the land from the deceased and she further purchased 2.25 acres from her mother for kshs. 65,000/- where she has put up a house.

The Defendant testified that she was not aware of any agreement between the Plaintiff and her deceased husband. She said she is the administrator of the deceased and she averred that the Plaintiff was not authorized to live on the suit land.

At the close of their testimonies the parties filed their submissions.

Having clearly read the pleadings and the testimonies of the witnesses and the submissions filed, the issues for determination before the court is whether the Plaintiff has been in adverse possession of the portion of land measuring 3.7 acres from Land Parcel No. Cis Mara/Ololulunga/171. It is the Plaintiff's contention that she purchased the suit land from the Defendant's deceased husband. This evidence has not been controverted by the Defendant. The Plaintiff maintained that upon purchase of the portion she has been in continuous occupation of the land for a period of over 12 years. With the purchase of the land and her continuous occupation and development thereon I find that the Defendant as having been ousted and dispossessed the payment of the purchase price has clearly extinguished the Defendant claim of the suit.

It is also improper to note that for all the years that the Plaintiff has been in occupation her possession was notorious and that the Defendant neither attempted to lay claim to the land nor attempted to evict her.

From the foregoing I find that the Plaintiff has proved her case on a balance of probabilities and I find that the Plaintiff claim to the land was by way of adverse possession was adequate, continuous and as such adverse to the rights and interest of the registered owner.

The upshot of the above is that I thus enter Judgement for the Plaintiff against the Defendant and I order that the Plaintiff be registered as the lawful and bonafide owner by way of adverse possession and the Defendant do transfer the portion measuring 3.7 acres to the Plaintiff within 30 days and in default the Deputy Registrar of this court to effect the transfer.

I award cost to the plaintiff.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 25<sup>th</sup> day of July, 2019**

**Mohammed Kullow**

**Judge**

**25/7/19**

In the presence of:-

Mr Kilele for the Defendant

Mr Karia holding brief for Mutai for the plaintiff

CA:Chuma/Kimiriny