



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO . 20 OF 2019

JOHANA KIPKURUI ROTICH.....PLAINTIFF

VERSUS

CHARLES KIAGI.....DEFENDANT

RULING

(Plaintiff filing suit for adverse possession; no extract of the register annexed; no document of title annexed; suit incompetent and struck out).

1. The plaintiff commenced this suit on 13 February 2019 by way of a plaint. In the plaint, he sought orders that he be declared the owner of the land parcel Nakuru/Kapsita Settlement Scheme Extension Block 5/1066 through the doctrine of adverse possession. Together with the plaint, he filed an application for injunction to restrain the defendant from interfering with his alleged possession pending hearing and determination of the suit. The application first came before me on 15 February 2019, when I advised the plaintiff, who was then acting in person, that if he seeks t orders of adverse possession, he must annex an extract of the register of the title that he claims. I then directed that the application be heard inter partes on 28 February 2019. On this day, the plaintiff did not appear to prosecute his application and I dismissed it. I also issued a notice to the plaintiff to show cause why his suit should not be dismissed for failure to annex an extract of the register (green card). On 4 April 2019, when the notice to show cause was to be heard, the plaintiff had instructed a firm of advocates, and Mr. Bosire, learned counsel, appeared for the plaintiff. The defendant was yet to enter appearance. Mr. Bosire submitted that his client was not able to get a copy of the green card because the land is under a Government caveat. I pointed out to counsel that it will not be possible to proceed for want of the green card and allowed him one more chance to get the same and directed the case to be mentioned on 10 June 2019.

2. On this day, Mr. Bosire on that day asked for additional two weeks. I was not inclined to give this period, noting that I had already given the plaintiff, two months prior to this date. Counsel then left it to the court.

3. The claim of the plaintiff is based on adverse possession. Such claim has its legal foundation in Section 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya. The procedure for lodging a claim for adverse possession is found in Order 37 Rule 7 of the Civil Procedure Rules, 2010, which provides as follows :-

7. (1) 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.

4. It is clear from the above that one needs to annex the extract of the title. This provision of the law is not superfluous, for there are categories of land where time for adverse possession will not start running. Among these is land under the Government, which is covered under Section 41 of the Limitation of Actions Act. The same provides as follows at Section 41 (a) (i) :-

Section 41 – This Act does not –

(a) Enable a person to acquire any title to, or any easement over-

(b) Government land or land otherwise enjoyed by the Government;

5. The reason why one needs to annex an extract of the title is so that the court is clear on the registration of the land and also clear that the land was not under an entity for which time would not start running such as the Government as I have illustrated above.

6. In our case, the plaintiff has not annexed an extract of the title as required by the rules. He has indeed not even annexed a copy of the title

deed, or any other document of title, for the same land. He has annexed nothing to show who the past or the current registered proprietor is. As matters stand, nobody knows who the registered owner of the land claimed by the plaintiff is, and this court cannot tell whether the plaintiff is disentitled to benefit from the running of time on the said title. It is pointless proceeding with such a suit for it is incompetent.

7. That being the position, I have no option but to strike it out, and the suit is so struck out. I make no orders as to costs as the defendant has not entered appearance.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 18th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Magata for the plaintiff

No appearance for the defendant.

Court Assistants: Nelima Janepher/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU