



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 4 OF 2017

FRANCESCA MUMBEE KITUNDU.....APPLICANT

VERSUS

KITHIKII MUTAMBU NGOMA.....RESPONDENT

JUDGMENT

1. In the Originating Summons dated 20th January, 2017, the Applicant is praying for the following orders:

- a. That the Plaintiff herein be declared to be entitled by adverse possession for over twelve (12) years to all that parcel of land known as Nzalae/Mutonguni/197, now registered in the names of Kithikii Ngoma Mutambu.***
- b. That the Plaintiff be registered as absolute proprietor in respect of title number Nzalae/Mutonguni/197.***
- c. That the costs of these summons be awarded to the Plaintiff.***

2. The Originating Summons is supported by the Affidavit of the Applicant who has deponed that the Respondent is the registered proprietor of land known as Nzalae/Mutonguni/197 (*the suit property*); that he lives and does farming on the suit land and that he has acquired prescriptive rights over the suit land.

3. The Affidavit of Service of the process-server shows that the Respondent was served with the Originating Summons on 8th February, 2017. However, the Respondent neither entered appearance nor filed a Replying Affidavit. The Originating Summons proceeded for hearing as an undefended cause of action.

4. The Applicant relied on his Affidavit when he appeared before the court to give *viva voce* evidence. I have summarized the contents of his Affidavit above.

5. In his submissions, the Applicant's advocate submitted that the Applicant has demonstrated that he has been in possession of the suit land since 1996 to date; that as at the date of filing the suit, she had been in possession of the land for twenty one (21) years and that the Applicant's possession was open and continuous.

6. Counsel submitted that under Section 7 of the Limitation of Actions Act, the Respondent is barred from recovering the suit land from the Applicant; that the Respondent's title has been extinguished and that the Applicant should be declared as the owner of the suit land.

7. The Respondent has not rebutted the Applicant's assertion that the Applicant has been in possession and occupation of the suit land since November, 1996. Considering that the Applicant has lived on the suit land continuously, peacefully and uninterrupted for a period of more than twelve (12) years, I find and hold that the Applicant has proved his case on a balance of probabilities.

8. For those reasons, I allow the Applicant's Originating Summons dated 20th January, 2017 as follows:

- a. That the Plaintiff herein be and is hereby declared to be entitled by adverse possession for over twelve (12) years to all that parcel of land known as Nzalae/Mutonguni/197, now registered in the name of Kithikii Ngoma Mutambu.***
- b. That the Plaintiff be registered as the absolute proprietor in respect of title number Nzalae/Mutonguni/197.***
- c. Each party to bear his/her own costs.***

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF JULY, 2019.

O.A. ANGOTE

JUDGE