



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. MISC. APPLN. NO. 17 OF 2017 (O.S)**

**BONIFACE MUTISYA MAEKE.....APPLICANT**

**VERSUS**

**FRANCIS MUTUA NGIL.....RESPONDENT**

**JUDGMENT**

1. In the Originating Summons dated 25<sup>th</sup> January, 2017, the Applicant is seeking for the following orders:

***a. That the Plaintiff herein be declared to be entitled by adverse possession for over twelve (12) years to land parcel numbers Yatta B2/Kwa Vonza/990 and Yatta B2/Kwa Vonza/991 now registered in the names of Francis Mutua Ngii.***

***b. That the Plaintiff be registered as absolute proprietor in respect of title numbers Yatta B2/Kwa Vonza/990 and Yatta B2/Kwa Vonza/991.***

2. The Originating Summons is supported by the Affidavit of the Applicant who has deponed that the Defendant is the registered proprietor of land known as Yatta B2/Kwa Vonza/1990 and Yatta B2/Kwa Vonza/991 (the suit properties); that he took possession of the suit properties in 1986 and that he has extensively developed the land.

3. The Applicant finally deponed that he has occupied the suit land continuously, peacefully and uninterrupted for a period exceeding twelve (12) years and that he has acquired prescriptive rights over the suit land.

4. Although the Respondent was served with the Originating Summons, he did not respond. The Originating Summons proceeded by way of viva voce evidence in the absence of the Defendant.

5. The Applicant, PW1, repeated the depositions in his Affidavit. According to PW1, he purchased the suit land from the Respondent whereafter he developed the land by putting up his house. PW1 informed the court that he has lived on the land continuously and with the knowledge of the Defendant since 1986 to date. PW1 produced in evidence the official searches for the two suit properties.

6. The searches produced by the Applicant shows that the Defendant was registered as the proprietor of Yatta B2/Kwa Vonza/990 and 991 on 3<sup>rd</sup> July, 1998. The Respondent has not denied that before the said land was registered in his favour, he had already sold the land to the Applicant in 1986.

7. The undisputed evidence before me is that the Applicant has been in occupation of the suit land for more than twelve (12) years with the knowledge of the Respondent. Under Section 7 as read together with Section 13 of the Limitation of Actions Act, the owner of land loses the right to claim the land after it is occupied continuously without interruption by an adverse possessor for a period of twelve (12) years.

8. Under Section 38(1) of the Limitation of Actions Act, after a period of twelve (12) years of adverse possession, the adverse possessor is entitled to apply to the court to be declared the owner of the land.

9. The Applicant having proved that he has been in occupation of the suit land *nec vi, nec clam, nec precario* (no force, no secrecy, no persuasion) for twelve (12) years, he is entitled to be registered as the owner of the two parcels of land.

10. In the circumstances, the Originating Summons dated 25<sup>th</sup> January, 2017, is allowed as follows:

***a. The Applicant is entitled by way of adverse possession to be registered as the absolute proprietor of land known as Yatta***

*B2/Kwa Vonza/990 and Yatta B2/Kwa Vonza/991.*

*b. The Land Registrar, Kitui, to register the Applicant as the proprietor of land known as Yatta B2/Kwa Vonza/990 and 991.*

*c. Each party to bear his own costs.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.**

**O.A. ANGOTE**

**JUDGE**