



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MISCELLANEOUS CAUSE NO. 77 OF 2009

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT (CAP 22)

LAWS OF KENYA

AND

IN THE APPLICATION BY RIRUTA SATELLITE WOMEN UMOJA GROUP

UNDER SECTION 38 OF THE LIMITATION OF ACTIONS ACT FOR

REGISTRATION OF TITLE TO LAND

GRACE WAMBUI KAMAU.....PLAINTIFF

(Suing on behalf of Riruta Satellite Women Group)

VERSUS

PHILOMENA WAMBUI.....DEFENDANT

JUDGEMENT

1. The Plaintiffs filed the Originating Summons dated 16/1/2009 on behalf of Riruta Satellite Umoja Group and on her own behalf against the Defendant claiming that Riruta Satellite Umoja Group is entitled to be registered as the proprietor of the land known as Dagorreti/Riruta/S.68 (“the Suit Property”). The Plaintiffs also seek an injunction to restrain the Defendant from interfering with Riruta Satellite Women Association Group’s possession of the Suit Property.
2. The Originating Summons is supported by the Plaintiff’s affidavit in which she depones that the Self Help Group which has 27 members is registered with the Ministry of Gender, Culture, Sports and Social Services.
3. The Defendant is the registered proprietor of the Suit Property. A certificate of lease was issued to her on 13/11/1990. The Self Help Group took possession of the Suit Property in 1987 with help of the area Chief and developed several one bedroomed rental units from which it derives income from its tenants. The Plaintiff applied for supply of electricity and water connected to the Suit Property and continues to pay the utility bills to date.
4. A representative of the Self Help Group attended court on 31/7/2017 and gave evidence. She confirmed that the Self Help Group was allocated the suit land in 1997. The Self Help Group members do not stay on the land. They have constructed residential units on it which they rent out to tenants. She stated that

they discovered that the Defendant owned the land in 1990. She also confirmed that the Defendant's advocate wrote to Group on 4/9/2007 asking them to vacate the suit premises. The Defendant had previously filed **Nairobi CMCC No 9019 of 2007** seeking eviction orders against the Plaintiff. That suit was dismissed.

5. The Senior Chief for Riruta Location, Dagoretti Division in the 1980s also gave evidence for the Plaintiff. He confirmed that the Women Group was given the Suit Property in 1982 by its predecessor and that the land was owned by the Government. He stated that the Women Group was not given a title and that back then the Provincial Administration used to recommend to the Commissioner of Lands that women and youth group ought to be given titles. He stated that he was not aware that the Defendant had a title for the Suit Property.

6. Before titles could be issued land officers would go to the land to confirm that it was unoccupied. They used to rely on the recommendation from the area Chief before allocating land. He confirmed that the Self Help Group owns the Suit Property.

7. The supplier who sold building materials such as stones, sand, cement, timber and iron sheet to the Women Group also gave evidence for the Plaintiff. He stated that he knows where the Women Group constructed their residential houses. He confirmed that there were ten rooms made of timber and iron sheets.

8. The Defendant attended court and gave evidence. She relied on her witness statement and the documents showing she is the registered owner of the Suit Property. She urged the court to dismiss the Plaintiffs' claim and enter judgement for her as prayed in the counterclaim in which she seeks a declaration that the Plaintiffs' possession, occupation and use of her land is unlawful and that they should deliver vacant possession of the Suit Property to her failing which they will be evicted.

9. She stated that she was given the suit land in 1987 and a title was issued to her in 1990. She confirmed that she has not done anything on the land since 1990 and does not stay on it. She stated that she knew in 1999 that Riruta Women Group had built on the land. She confirmed that she never gave the Women Group permission to build on her the land and that she has never tried to remove them from the land.

10. The issue for determination is whether the Plaintiffs have become entitled to the Suit Property by adverse possession. To establish such a claim, the known owner must have lost the right to the land by being dispossessed of it or by having continued dispossession of it. The Plaintiffs' witnesses gave evidence that the Self Help Group has been in possession of the suit land from 1987 to date.

11. To prove a claim for adverse possession, a claimant must have been in continuous, uninterrupted, open, public, exclusive and peaceful possession of the subject land for 12 years. He must show that he was in possession without the owner's authority and that the registered owner had knowledge of his possession.

12. The court finds that the Riruta Satellite Women Group has proved the ingredients that show it has a claim over the Suit Property adverse to the registered owner's interest. The Defendant admitted that she learnt in 1999 that the Plaintiffs had constructed structures on her land and were in possession of the Suit Property.

13. Justice Serگون in **Kazungu Maleja Mbaru and 5 others V. Hathini Company Limited** [2006] eKLR observed that what is important is for the Plaintiff to prove the kind of activities they have done on the land that are inconsistent with the Defendant's right to the land and that it is also incumbent on the plaintiff to prove that their occupation was open, notorious, peaceful and uninterrupted for over 12 years.

14. The court is satisfied that the Plaintiffs have proved their claim for adverse possession to be registered as the proprietors of the property known as Dagoretti/Riruta/S.68. An order of injunction is issued to restrain the Defendant from interfering with the Plaintiff's quiet possession of the Suit Property.

15. The Defendant has failed to prove her counterclaim. It is dismissed with costs to the Plaintiffs. The Plaintiffs will also have the costs of the suit.

Dated and delivered at Nairobi this 25th day of January 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Wairimu for the Defendant

No appearance for the Plaintiff

Mr. V. Owuor- Court Assistant