



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
CHUKA ELC CASE NO. 131 OF 2017
FORMERLY MERU ELC. 38 OF 2011
DANSON MIANO KANGANGI.....PLAINTIFF
VERSUS
NJOGU NCEKEBU & 3 OTHERS.....DEFENDANTS
RULING

1. This suit was brought to court by way of Originating Summons. It is in the following form:

ORIGINATING SUMMONS

(UNDER ORDER XXXVI R 3D (1) (2) AND (3) CPR AND UNDER S. 38 LIMITATION OF ACTIONS ACT)

LET NJOGU NCEKEBU, ESTHER CIAKUTHI, BONFACE MBOGO and PHINEAS MUTEMBEI NJOGU properties of LR NO. MAGUMONI/ITUGURURU/1997, 2000, 2001, and 2003 within Chuka enter appearance within 15 days of service of these summons issued upon application of DANSON MIANO KANGANGI who claims to have obtained by adverse possession since 1990 8acres of the suit lands.

For determination of the following questions?

1. Are L.R.No. MAGUMONI/ITUGURURU/1997, 2000, 2001 and 2002 registered in the names of the defendants respectively?
2. Is the suit lands (sic) measuring approximately 8 acres?
3. . Is the plaintiff in possession of 0.72 acres?
4. Has the plaintiff therefore obtained title to 8 acres by limitation of action act and the doctrine of adverse possession?
5. How can ownership be determined by the court?
6. Is the plaintiff entitled to costs of the suit?

This summons is supported by the affidavit of Danson Miano and on the grounds that:-

a. The applicants (sic) has possessed 8 acres out of the suit lands for a period over 12 years, peacefully, openly and uninterrupted.

Relief sought:-

a. A declaration that the plaintiff has obtained title to 8 acres of the suit lands by the doctrine of adverse possession and limitation of actions act and he is therefore entitled to be registered as the proprietor of the same.

b. Costs of the suit.

DATED AT MERU THIS 11TH DAY OF MARCH 2011

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FOR: L. KIMATHI KIARA & CO. ADV

FOR THE PLAINTIFF

2. This matter came up for directions on **28th February, 2018**. The defendants and their advocate were present. Mr. Njeru Ithiga, for the defendants told the court that Mr. Ondari, the plaintiff's advocate had told him that he did not wish to have his client substituted although he **died sometime in October, 2017**. Mr. Ithiga went on to tell the court that Mr. Ondari told him that he stood by his written letter to this court's **Deputy Registrar** intimating that he wanted to withdraw the suit against the defendants with no order as to costs.

3. Mr. Ithiga told the court that he was not opposed to the withdrawal of the suit as long as costs were awarded to the defendants.

4. I have carefully considered this matter. There is no point clogging up the court system where the plaintiff has already expressed his wish to withdraw a suit. The **letter intimating withdrawal is dated 25.4.2017** and was filed in court on **21st June, 2017** about 4 months before the plaintiff died. An advocate is the agent of his principal, in this case the plaintiff. It is presumed that an advocate always acts with the instructions of his principal, his client. I find it meritorious that this suit be marked as withdrawn against the defendants.

5. Regarding costs, these are awarded or not awarded at the discretion of the court. This discretion is exercised judicially **BUT** not capriciously.

6. It is ordered as follows:

1. This suit is marked as withdrawn

2. Costs are awarded to the defendants

7. It is so ordered.

Delivered in open court at Chuka this 28th day of February, 2018 in the presence of:

CA: Ndegwa

Njeru Ithiga for the defendants

P.M. NJOROGE

JUDGE