



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO. 93 OF 2017**

**FORMERLY MERU ELC CAE NO. 11 OF 2006**

**RUKENYA BUURI.....PLAINTIFF**

**VERSUS**

**M'ARIMI MINYORA.....1<sup>ST</sup> DEFENDANT**

**DERICK KIRUJA.....2<sup>ND</sup> DEFENDANT**

**MUGENDI M'ARIMI.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. This suit is constituted by a consolidation of two suits.

2. Meru HCCC No. 11 of 2006 had the following parties:

Rukenya Buuri – plaintiff

M'Arimi Minyora – 1<sup>st</sup> defendant

Derick Kiruja – 2<sup>nd</sup> defendant

Mugendi M'Arimi – 3<sup>rd</sup> defendant

3. Meru HCCC No. 82 of 2009 (OS) had the following parties:

Derick Mugambi – 1<sup>st</sup> applicant

Mugendi M'Arimi – 2<sup>nd</sup> applicant

Rukenya Buuri – respondent

4. An order for consolidation of the two suits was issued on 2<sup>nd</sup> March, 2016. The earlier file, HCCC 11 of 2006 was to be the operational file with the plaintiff therein remaining the plaintiff and the other parties to be defendants. HCCC No. 82 of 2009 (OS) would constitute a counter claim.

5. The suit was fixed for hearing on 27<sup>th</sup> November, 2017. On that day, the plaintiff's advocate informed the court that he was not ready to proceed with hearing because his client, the plaintiff was not in court. He complained that even though the plaintiff was aware that hearing was to take place, he had failed and or refused to come to court. He indicated that he was considering filing an application to cease acting for the plaintiff.

6. The defendant's advocate protested that the hearing of the suit should proceed as the plaintiff was all along aware of the hearing date. Nevertheless, in the interest of justice, I granted the parties another hearing date. Hearing was fixed to take place on 18<sup>th</sup> December, 2017.

7. On 18<sup>th</sup> December, 2017, the defendants and their advocate were in court but the plaintiff and his advocate were absent. Mr. I.C. Mugo

asked the court to dismiss the plaintiff's case.

8. As required by Order 12 rule 3, the suit was called on outside court and it was confirmed that the plaintiff had failed or refused to attend the hearing of this suit.

9. This court dismissed the plaintiff's suit.

10. As the defendant had a counter claim, he was called upon to prove his case.

11. The 2<sup>nd</sup> applicant in Meru HCCC 82 OF 2009, Derick Mugambi M'Arimi, DW1, asked the court to adopt his witness statement dated 12<sup>th</sup> August, 2017 as his evidence in chief in this suit.

12. A conspectus of DW1's evidence is that he is 59 years old, was born on the suit land and that there is no other place he can call home. He avers he has been living on the suit land all his life with his father M'Arimi Munyora, his step mother Agnes Igoji M'Arimi, his step brother Bornface Njuki M'Arimi, his step sister ZELIA Mugai M'Arimi, another step sister, Adeliae Kagendo M'Arimi, two other step brothers Jackson Gitonga and Dennis Mugambi M'Arimi and another step sister Analita Kawira M'Arimi.

13. He avers that although the plaintiff Rukenya Buuri is the registered proprietor of land parcel NO. MWIMBI/S. MUGUMANGO/305, his title had been extinguished by operation of the law through the doctrine of adverse possession by the applicants/defendants as they had always been in occupation of the suit land openly and uninterrupted and there has never been an attempt by the plaintiff to evict them before they acquired title through prescription after having occupied 3 acres out of the suit land for over 12 years.

14. DW1 avers that on the suit land, the family of the late M'Arimi Munyora, his father, had the following developments:

- i) 6 residential houses
- ii) Around 5 mature gravellier trees, over 30 years old
- iii) Many mature indigenous trees, over 60 years old
- iv) Cowshed and goat pen
- v) Subsistence crops
- vi) Piped water
- vii) Mature mango trees and avocado trees
- viii) 50 mature miraa trees
- ix) 100 banana trees

15. DW1 avers that land parcel No. MWIMBI/MUGUMANGO/305 is about 6 acres in size. He prays that the plaintiff be directed to transfer 3 acres out of the suit land to the applicants and in default this court's executive officer be authorized to execute all apposite documents to effect transfer of 3 acres from the plaintiff to the applicants/defendants.

16. DW1 avers that though the plaintiff in civil suit No. 11 of 2006, M'Arimi Munyora had a land dispute in Mwimbi L.D.T. Case No. 11 of 2005, this dispute had no nexus with this suit as it concerned parcel numbers Mwimbi/S. Mugumango/2031 and 2031 and NOT the suit land which is land parcel No. Mwimbi/S. Mugumango/305.

17. DW1 produced as exhibits the following documents:

- a) Official Search for L.R. Mwimbi/S. Mugumango/305.
- b) Photographs showing the applicants' buildings constructed on LR.Mwimbi/S. Mugumango/305.
- c) Proceedings in Land Dispute Tribunal in Mwimbi L.D.T. Case No. 11/02005 in respect of land parcel Mwimbi/S. Mugumango/1031 and Mwimbi/S.Mugumango/1032 (Boundary Dispute)
- d) Provincial Appeals Committee at Embu proceedings and judgment in Appeal NO. 53 of 2008.

18. I find that the applicants/defendants have proved their counter-claim.

19. I find that the applicants in Meru HCCC (later ELC) No. 82 of 2009 (OS) have obtained 3 acres of land from Land Parcel NO. MWIMBI/S. MUGUMANGO/305 by way of adverse possession.

20. Judgment is entered for the applicants in Meru HCCC (Later ELC) No. 82 of 2009 OS against the Respondent (now the plaintiff in this suit in the following terms:

(1) Rukenya Buuri, the respondent in Meru HCCC (later ELC) No. 82 of 2009 (OS) is ordered to transfer 3 acres out of Land Parcel No. MWIMBI/S. MUGUMANGO/305 to the applicants and in default this court's executive officer is authorized to execute apposite documents necessary to effect the implementation of this order.

(2) The plaintiff's suit in Meru HCCC (Later ELC) 11 of 2006 and any claim in this suit which is a consolidation of Meru HCCC No. 11 of 2006 and Meru HCCC No. 82 of 2009 (OS) are dismissed.

(3) Parties are to bear their costs.

Delivered in open court at Chuka this **14<sup>th</sup> day of February, 2018** in the presence of:

CA: Ndegwa

Parties not in court.

**P.M. NJORGE**

**JUDGE**