



**Langat v Chepyoset (Environment & Land Case 401 of 2017)  
[2018] KEELC 4881 (KLR) (2 March 2018) (Judgment)**

Neutral citation: [2018] KEELC 4881 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 401 OF 2017**

**MN KULLOW, J**

**MARCH 2, 2018**

**BETWEEN**

**PAUL LANGAT ..... PLAINTIFF**

**AND**

**RACHAEL CHEPYOSET ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced the suit herein by way of an Originating Summons dated June 22, 2012 seeking orders that the plaintiff be declared to have acquired by virtue of adverse possession for land parcel NO Transmara/Ololmasani/933, an order that the applicant be registered as the proprietor of the aforesaid parcel of land measuring 1.34 hectares together with costs.
2. The Originating summons was supported by the plaintiff's Affidavit where he contends that he is the registered owner of a parcel of land known as Transmara/Ololmasani/625 and he also released that he is the registered owner of a parcel of land known as Transmara /Ololmasni/625 and he also realised that he it had another registration number Transmara/Ololmsani /923.He averred that he had lived on the suit and for a period of over 25 years openly and uninterrupted.
3. The plaintiff further averred that the defendant without any authority moved into the land and attempted to remove him when he went to find out the suit land was registered in the name of the defendant.
4. The defendant filed a replying Affidavit in opposition to the originating summon where she averred that she is the registered and absolute proprietor of land parcel No Trasmara/Ololmasani/923, she further contended that she allowed the plaintiff to live on the suit land in the year 2001 and that he occupied the land on the understanding that he will be a mere licensee.
5. The defendant further contended that the plaintiff with another party attempted to fraudulently acquire land claiming that she was dead. The defendant denied that the plaintiff had enjoyed peaceful



occupation of the land and that the plaintiff in her neighbour and owned land parcel No Trasmara/Ololmasani/925.

6. At the close of the pleadings directions were given that the originating summons shall be deemed as a plaint and the plaintiff replying affidavit as a Defence and that the matter shall be heard by way of viva voce evidence. At the hearing the plaintiff gave evidence and called 2 witnesses. In his evidence the plaintiff reiterated the contents of the supporting Affidavit. The plaintiff stated he had lived on the suit and he had exchanged his parcel of land with that which was owned by Mzee Kimutai Merusoi and both him and Kimutai did not have title to the land .
7. The defendant testified and she stated that she is the registered proprietor of land parcel Transmara/Ololmasani/923 measuring approximately 1.34 hectares. She stated that she allowed the plaintiff entry to her land for the purpose to use the land for the farming with her own knowledge but the plaintiff wanted to late acquire her land fraudulently after she refused to sale him the same through his wife. She further denied that the plaintiff had been on the land for over 25 years.
8. I have carefully considered the evidence tendered by the plaintiff and his witness on the occupation of the suit land against the evidence of the defendant and I find the evidence of the defendant inconsistent and incredible in her evidence in chief the defendant contended that the plaintiff has occupied her land with her permission but she does not stated whether he said permission was by way of lease of an outright sale in cross-examination, she admitted that the plaintiff had been using the land for along time and she had not made any attempt to have the plaintiff to surrender back to her or evict him from the suit land.
9. From the evidence on record, it is not disputed that the plaintiff had entered on the land and had been in actual occupation and possession thereof for over 25 years. Even though the suit land was registered in the name of defendant and in view of the above an satisfied that the plaintiff has proved his claim against the defendant on a balance of probabilities and I therefore enter Judgment for the plaintiff against the defendant for :-
  - i. A declaration that the plaintiff has acquired title to all that parcel of land known a s Transmara/Ololmsani/923, measuring 1.34 (One decimal three four Hectares by way of adverse possession.
  - ii. An order is hereby issued the applicant the defendant shall transfer the suit land to the applicant within 45 days of this Judgment failure to which the Deputy Registrar of this court shall be at liberty to execute, transfer documents in favour of the applicant.
  - iii. That an order of permanent injunction is hereby issued restraining the defendant by herself, servants or any other persons acting on her instructions from evicting, entering or interfering with the plaintiff occupation and possession of the suit land.
  - iv. The costs of the suit be borne by the defendant

**DATED SIGNED DELIVERED**, Virtually at **NAROK** this 2<sup>nd</sup> Day of March 2018.

**MOHAMMED .N. KULLOW**

**JUDGE**

