



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 228 OF 2017 (O.S)

MARIETTA MBULA MUNYAOPLAINTIFF

VERSUS

PHYLLIS NDULULU KATITIDEFENDANT

JUDGMENT

1. In the Originating Summons dated 15th May, 2017, the Plaintiff is seeking for the following reliefs:

a. That the Plaintiff/Applicant is entitled to ownership of all that parcel of land known as Land Reference Number 12715/281 with IR number 44670 by virtue of adverse possession of land and a vesting order be issued in favour of the Plaintiff/Applicant over the said Land Reference Number 12715/281 with IR Number 44670 situate in Syokimau area, Machakos County.

b. That the parcel of land known as Land Reference Number 12715/281 with IR number 44670 be and is hereby transferred to the Plaintiff/Applicant.

c. That the Chief Land Registrar issues the Plaintiff/Applicant with a Title to the said parcel of land known as Land Reference Number 12715/281 with IR number 44670.

d. That costs of this Application be awarded to the Plaintiff/Applicant.

2. The Originating Summons is supported by the Affidavit of the Plaintiff who has deponed that she has been in continuous and uninterrupted occupation of land known as L.R. No. 12715/281 with her family for over twenty (20) years.

3. The Plaintiff has further deponed that she is the one who has taken care of the suit property for the last twenty (20) years with the full knowledge of the Defendant and that she had been utilizing the suit property without any interference from the Defendant.

4. Although the Defendant was served with the Originating Summons by way of advertisement, she neither entered appearance nor filed a Defence.

5. The Originating Summons proceeded by way of Affidavit evidence and submissions.

6. The Plaintiff's advocate submitted that under Order 37 Rule 7 of the Civil Procedure Rules, any person claiming ownership by way of adverse possession shall make an Application under Section 38 of the Limitation of Actions Act by way of Originating Summons.

7. Counsel submitted that the depositions of the Plaintiff that she has been on the suit land for more than twelve (12) years without any interruption have not been controverted.

8. Under Section 38(1) of the Limitation of Actions Act, when an individual claims to have become entitled by way of adverse possession to land registered under any of the Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land in place of the person then registered as proprietor.

9. The Plaintiff's deposition that she has occupied and utilized the suit continuously, openly and exclusively for more than twelve (12) years has not been rebutted by the Defendant.

10. The Plaintiff, by way of Affidavit evidence, has proved that she has used the suit land as of right: *nec vi, nec clam, nec precario* (without force, secrecy or persuasion). Consequently, I allow the Plaintiff's Originating Summons dated 15th May, 2015 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF MARCH, 2018.

O.A. ANGOTE

JUDGE