



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 316 OF 2017

FORMERLY KISII ELC NO. 37 OF 2016

STEPHEN PARMOIS LESHAO.....PLAINTIFF

-VERSUS-

JOSEPH NJERU KARANJA1ST DEFENDANT

CHARLES SIMIYU NASIBU WEKESA.....2ND DEFENDANT

SIMION MWANGI MENU.....3RD DEFENDANT

CHARLES NYANGAI SEME.....4TH DEFENDANT

JUDGEMENT

The Plaintiff commenced the suit herein by way of an Originating Summons brought under order 37 Rules 7 and 14 of the Civil Procedure Rules 2010 and order section 38 of the Limitations of Actions Act. The Plaintiff sought a declaration that the Defendants rights to recover the whole of **LR NO. TRANS MARA /MOYOI/122,125,132,162** is barred under the limitations of Actions Act and their title thereto is extinguished on the grounds that the Plaintiff openly, peacefully and continuously been in occupation and possession of the aforesaid parcels of land for a period of 25 years and thus sought for an order that the Plaintiff be registered as the owner of the whole of LR No. Trans Mara/Moyoi/122,125,132 and 162.

The Plaintiff further sought an order that the Deputy Registrar of court do execute transfer instruments to facilitate the transfer for the aforesaid parcels of land in the event that the Defendants default in the execution of transfer documents.

The Plaintiff's claim is based on several issues namely that the parcels of land are situated within Moyoi Group Ranch and that he has been in continuous occupation and possession of the suit land for an interrupted period of 25 years since 1990's and that during the period no particular person could be entitled to community land.

The Plaintiff further contends that in year 2001 the Defendants caused the said land to be registered in their names, however despite the same they did not take possession and occupation of the land.

The Plaintiff thus claims on the above grounds the Defendant claims and title to the land had extinguished by effluxion of time and as a result he be granted the orders sought.

The Defendants despite service of summons failed and/or neglected to file their respective defence and

therefore the suit proceeded in their absence.

The Plaintiff in his evidence stated that he has lived on the suit land for a continuous period of 25 years and has developed parcels 132 and 162 where he has constructed houses. He further stated that he has not seen the Defendants for all that time and that while he was living on the land and in occupation the same was registered in the names of the Defendants. He produced copies of official search in names of the Plaintiff and a caution he placed on the title. He contended that despite the above, the Defendants have never challenged his occupation of land.

Upon hearing the Plaintiff's case and the evidence placed, the issue for determination before me is whether the Plaintiff has been in occupation of the suit land and whether the Defendants rights have been extinguished.

From the evidence before me I have no doubt that the Plaintiff has occupied the suit for a period of over 25 years as this evidence has remained uncontroverted and unchallenged.

On the second when the Defendants failed to assert and claim their right all along and they have not disputed the Plaintiff's registration of the suit land this has not affected the Plaintiff's adverse possession rights.

In the case of **GITHU-VERSUS-NDETTE (1984) KLR Page 776-781** the court held that:-

“Mere change of ownership of land which is occupied by another person under adverse possession does not interrupt such person's adverse possession.”

In view of the foregoing I find that the Plaintiff has proved his case on a balance of probabilities and I therefore enter judgement for the Plaintiff in the following terms:-

- 1. A declaration do issue that the Defendants right to recover the suit land Trans Mara/Moiyoi/122,125,132,162 is barred under section 7 of the limitation of actions Act and the title extinguished.**
- 2. That the Deputy Registrar of this court do execute transfer instruments and all such other attendant documents to facilitate the transfer and registration of the whole of LR parcels No. Trans Mara Moyoi/122,125,132 and 162 in favour of the Plaintiff in default of the Defendants to execute the same**
- 3. Costs to the plaintiff.**

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **2nd** day of **March, 2018**

Mohammed Noor Kullow

Judge

In the presence of:-

Mr Langat holding brief for Ogutu for the Plaintiff

N/A for the Defendants

CA:Kimiriny

Mohammed Noor Kullow

Judge

