



**REPUBLIC OF KENYA**

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

**ELC NO. 311 OF 2013**

**ANDREW MUNG'ATIA ANJURI .....1<sup>ST</sup> PLAINTIFF**

**SILAS KAMATHI AYUB .....2<sup>ND</sup> PLAINTIFF**

**PETER NTURIBI ..... 3<sup>RD</sup> PLAINTIFF**

***VERSUS***

**KIRIMA GIDEON RINGERA ..... DEFENDANT**

**JUDGMENT**

1. Vide the Originating Summons filed on 2.12.2013, plaintiffs have sued defendant claiming entitlement to land Parcel NO. NYAKI/GIAKI/865 by way of adverse possession.
2. The matter proceeded as a formal proof as defendant never entered appearance or filed a response despite the fact that service was effected.
3. Plaintiffs' case is that in 1975, the three plaintiffs bought approximately 14 acres of land from defendant's father who is now deceased. The suit land was a portion of the land parcel No. Nyaki/Giaki/289 which land in total comprised of 23 acres. Transfer was not effected but plaintiffs took over the immediate possession of 14 acres of land.
4. Thereafter, the Meru County Council caused the subdivision of that land parcel No. 289 whereby the portion which plaintiffs had bought was given a new number, the same being Nyaki/Giaki/865 and the same was registered in name of defendant. Again defendant refused to transfer the land to the plaintiffs.
5. PW1 who is the 1<sup>st</sup> plaintiff and who testified on behalf of the other plaintiffs stated that each plaintiff occupies about a 1/3 of the suit land and that the plaintiffs are the ones utilizing the land to date.
6. Plaintiffs submit that they had tried to enforce the sale agreement by filing Meru H.C.C 247/1989 but the file got lost when there were inhibition orders in force.
7. In support of that case, plaintiffs have produced as an exhibit a copy of the green card for Parcel No. NYAKI/Giaki/865.
8. I find that the particulars of the Meru H.C.C 247/1989 have not been availed to this court save the averment that the file got lost. This court is hence in the dark as to who had filed the suit, and who had applied for the inhibition orders.

9. Nevertheless, plaintiffs claim is uncontroverted. The materials presented before me, particularly the green card indicates that there is land known as Nyaki/Giaki/865 which is 5.91 ha. The land is registered in the name of defendant whereby a title deed was issued on 19.11.1987.

10. Further entries in this document show that 1<sup>st</sup> plaintiff had lodged a caution on the suit land on 24.1.1996 whereas a restriction on the land was lodged on 26.1.1996 and on same day an inhibition too was imposed pursuant to court orders in Civil Case No. 247 of 1989. The orders of inhibition were extended now and then until 12.6.1996 when it was indicated that the inhibition was to stay until the civil case no. 247/1989 was finalized. This is the case that was never finalized. However, the fact that 1<sup>st</sup> plaintiff had lodged a caution on the land gives credence to plaintiffs averment that all along they had an interest in the suit land.

11. There is no evidence to indicate that plaintiffs' occupation of the suit land was ever interrupted by defendant. I am therefore in agreement with plaintiffs submissions that plaintiffs have proved their case on a balance of probability.

12. I grant the following orders:

(i) It is hereby declared that plaintiffs are entitled to land parcel NO. Nyaki/Giaki/865 by way of adverse possession.

(ii) An order is hereby issued for the defendant to execute all the requisite documents to facilitate the transfer of the land Nyaki/Giaki/865 from the defendant to the plaintiff and in default, the Deputy Registrar of this court is hereby authorized to sign such documents.

(iii) Plaintiffs are awarded costs of the suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25<sup>th</sup> APRIL, 2018 IN THE PRESENCE OF:-**

**Court Assistant:** Janet/Galgalo

Mutegi for plaintiff

No appearance for defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**