



**REPUBLIC OF KENYA**

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

**ELC. CASE NO.118 OF 2010 (O.S)**

**FESTUS TITUS KIMELE.....PLAINTIFF**

**VERSUS**

**PIUS NGUI KISWILI.....1<sup>ST</sup> DEFENDANT**

**JOSEPH KAKII KISWILI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Originating Summons dated 22<sup>nd</sup> June, 2010, the Plaintiff is seeking for the following orders:

***a. That the Plaintiff herein be declared to be entitled by adverse possession of over twelve (12) years to 25.015 acres of land comprised in land title No. Mutonguni/Kauwi/1247 registered under the Registered Land Act Chapter 300 Laws of Kenya, and situated in Kitui West District.***

***b. That the Plaintiff be registered as the absolute proprietor of 25.015 acres of land comprised in land title no. Mutonguni/Kauwi/1247.***

2. The suit is supported by the affidavit of the Plaintiff who has deponed that the Defendants are the administrators of the Estate of Kiswili Nyile; that the deceased is the registered proprietor of land known as Mutonguni/Kauwi/1247; that in 1985, he took vacant possession of the land measuring 25.015 acres and that he has been cultivating the said land continuously and peacefully for more than twelve (12) years.

3. Although the Defendants were served with the Originating Summons, they did not file any pleading in response.

4. The Plaintiff, PW1, informed the court that he took possession of a portion of land known as Mutonguni/Kauwi/1247 in 1985; that he has been utilizing 25.015 acres of the suit land since then and that it is now more than twelve (12) years since he took vacant possession of the land.

5. The Plaintiff's counsel submitted that by the year 2010, the Plaintiff had occupied a portion of the suit land for twenty five (25) years. Counsel relied on several authorities which I have considered.

6. The Plaintiff's assertion that he took possession of 25.015 acres of land known as Mutonguni/Kauwi/1247 in 1985 has not been controverted by the Defendants. Indeed, the Plaintiff's claim is not opposed.

7. To succeed in a claim for adverse possession, it must be shown that there was open, continuous and uninterrupted possession of land for a period of at least twelve (12) years (***See Patrick Magu Mwangi vs. Joreth Limited, (2015) eKLR***). The Plaintiff has established that he has been occupying a portion of the suit for more than twelve (12) years. For those reasons, I allow the Originating Summons dated 22<sup>nd</sup> June, 2010 in the following terms:

***a. The Plaintiff be and is hereby declared to be entitled to 25.015 acres comprised in parcel of land known as Mutonguni/Kauwi/1247 by virtue of having acquired it by adverse possession.***

***b. The Land Registrar, Kitui, County, be and is hereby ordered to register the Plaintiff as the owner of 25.015 acres of land excised from title number Mutonguni/Kauwi/1247.***

***c. Each party to bear his own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13<sup>TH</sup> DAY OF APRIL, 2018.**

**O.A. ANGOTE**

**JUDGE**