



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 214 OF 2017 (O.S)**

**JOSEPH WANDABI.....PLAINTIFF/APPLICANT**

**VERSUS**

**SERAH MARY MAGERA.....DEFENDANT/RESPONDENT**

**JUDGMENT**

1. This suit was commenced by way of Originating Summons dated 5<sup>th</sup> May, 2017 in which the Applicant was seeking for the following orders:

***a. That the Plaintiff/Applicant is entitled to ownership of all that parcel of land known as Land Reference Number 12715/142 with IR number 44449 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 12715/142 with IR number 44449 situate in Syokimau area, Machakos County.***

***b. That the parcel of land known as Land Reference Number 12715/142 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 12715/142.***

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

2. The Originating Summons is premised on the ground that the Applicant has been in physical occupation of L.R. No. 12715/142 for over twelve (12) years; that his occupation has been open, uninterrupted and continuous for over twelve (12) years to the exclusion of any other party and that he has lived on the land for over twelve (12) years with his family.

3. The Originating Summons was served on the Defendant by way of advertisement in the Standard newspaper of 22<sup>nd</sup> May, 2017.

4. On 10<sup>th</sup> July, 2017, the court directed that the matter proceed by way of written submissions. The court further directed that the submissions be served within twenty one (21) days.

5. On 31<sup>st</sup> July, 2017, after the court had issued directions, the Respondent filed a Replying Affidavit in opposition to the Originating Summons.

6. In the Replying Affidavit, the Respondent deponed that she bought the suit land in 1988; that she has never deserted the land; that the Applicant has never lived on the land and that she fenced the land and hired a security guard to look after the land.

7. Although the Applicant's advocate had filed his submissions, he withdrew from acting for the Applicant vide an Application dated 10<sup>th</sup> October, 2017. The Respondent served the Applicant with a mention notice vide the registered post.

8. Having withdrawn from acting for the Plaintiff, and the Applicant having failed to attend court to inform the court how he wishes to prosecute the suit, I am of the view that the suit remains unprosecuted.

9. Indeed, notwithstanding the fact that both the Applicant's and Respondent's advocate had filed their respective submissions, the Applicant ought to have come on record either in person or through another advocate to prosecute the Originating Summons.

10. Having failed to attend court to prosecute the suit, I shall not go into the issue of whether he has proved the case on a balance of probability or not. Rather, I shall, which I hereby do, dismiss the Originating Summons dated 5<sup>th</sup> May, 2017 with costs for want of prosecution.

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

**O.A. ANGOTE**

**JUDGE**