



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.397 OF 2017**

**LUCAS NYAMBEGERA NYANGWESO.....PLAINTIFF**

**VERSUS**

**ZAKAYO ONYANGO OGOLA.....DEFENDANT**

**JUDGMENT**

***(Suit for claim of land by way of adverse possession; suit uncontested; applicant having been in the suit land for a period of over 17 years uninterrupted; title holder never coming forth to claim the land; judgment entered in favour of the applicant).***

1. This suit was commenced through an Originating Summons filed on 11 April 2012 and taken out pursuant to the provisions of Sections 37 and 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya, and Order 37 Rules 7 and 8 of the Civil Procedure Rules, 2010. It is a suit vide which the applicant seeks orders that he be declared to have obtained by way of adverse possession, the land parcel Nakuru/Miti Mingi Scheme/9 (hereinafter referred to as the "suit land"). The summons are supported by the affidavit of the applicant, although on 13 October 2014, directions were taken for the matter to proceed by way of viva voce evidence.

2. The respondent could not be traced for service and service upon him was effected through an advertisement in the Standard Newspaper of 4 December 2012. Despite service, he did not enter appearance and the suit is therefore unopposed by the respondent.

3. In his evidence, the applicant did testify that he is a retired civil servant. In the year 1993, he was working in Narok town and his friend who used to live in Miti Mingi Settlement Scheme, where the suit land is situated, invited him over for a visit. He visited his friend who was in the business of rearing cattle and he also became interested in the same. He requested his friend to accommodate his animals, which his friend agreed, but after some time his cattle became too many and he opted to move them to a neighbouring land which happens to be the suit land. He moved here in the year 1995. He fenced it and put some employees on the land. He has been in occupation of that land since then. He produced the copy of register which shows that the suit land is registered in the name of the respondent, having acquired title on 4 April 1991. The applicant testified that he has never met the respondent. He stated that on the land he has farmed maize and mangoes and has constructed a small dam. He averred that since he moved into the land in the year 1995, nobody has come to interrupt his possession of the land.

4. The right to claim land by way of adverse possession is granted in Section 38 (1) of the Limitation of Actions Act, Cap 22, Laws of Kenya, which provides as follows :-

*Section 38 (1) : Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.*

5. It is trite law that for one to claim ownership of land through adverse possession, one needs to demonstrate that he has been in continuous uninterrupted possession for a period of at least 12 years. Such possession must be without violence and must be open without secrecy. The applicant also needs to demonstrate that he has the requisite animus possidendi or intention to acquire the land.

6. In this case, the evidence of the applicant is not contested. He did testify that he came into occupation in the year 1995 and he had therefore been in possession for a period of about 17 years to the time that he filed suit. This is far in excess of the minimum 12 year period. He has testified that he has been in open and uninterrupted possession for all this period. His possession has also been open and without stealth. He has fenced the land, reared livestock on it and planted crops. He has also placed workers in the suit land. The respondent has never come to this land and to date his whereabouts are unknown.

7. I have no doubt in my mind that from the above evidence, the applicant has on a balance of probabilities proved his case for entitlement to the suit land under the doctrine of adverse possession. I therefore do declare that he has acquired title to the land parcel Nakuru/Miti Mingi

Scheme/9 by way of adverse possession. I hereby order the Land Registrar, Nakuru District, to register the applicant as proprietor of the suit land.

8. On costs, the suit was not contested and I therefore make no orders as to costs.

9. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 28<sup>th</sup> day of June 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

No appearance on the part of M/s Oyugi & Company Advocates for the plaintiff.

No appearance entered for the defendant.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**