



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 538 OF 2016 (OS)**

**SHILA JAYANT KUMAR RUPAREL.....PLAINTIFF**

(Suing as personal representative of JAYANTKUMAR JAMNADAS RUPAREL)

**=VERSUS=**

**GURDIAL SINGH.....1ST DEFENDANT**

**NARWAYAR SINGH.....2ND DEFENDANT**

**PREM SINGH.....3RD DEFENDANT**

**JUDGMENT**

1. The late Jayantkumar Jamnadas Ruparel (the **deceased**) instituted this claim through an Originating Summons dated 17th March 2000 and filed in court on 22nd March 2000 seeking the following orders:-

- a. That the plaintiff has become entitled as a purchaser to all that parcel of land known as LR No. 37/248 (hereinafter referred the suit property) having paid to the defendant the full purchase price of Kshs 20,000/- and having been in possession of the suit property since 1976.**
- b. In the alternative, the plaintiff be declared to have become entitled to and is the owner of the suit property by virtue of adverse possession having been in possession since 1976.**
- c. The defendant be ordered or in default the Deputy Registrar of the High Court be authorized to execute on behalf of the defendant all the necessary documents to facilitate the transfer of the suit property to the plaintiff and or his nominee.**
- d. Costs of the suit be provided for.**

2. Jayantkumar Jamnadas Ruparel subsequently died on 10/4/2001. On 27/7/2005 Ransley J granted orders of revival and substitution, bringing on board the deceased's wife, Shila Jayantkumar Ruparel.

3. The defendants were served by way of notice in the Daily Nation Newspaper in August 2002 and January 2012 but did not file a response to the originating summons. Consequently, this suit proceeded to hearing as an undefended cause.

4. In his affidavit in support of the application, the deceased deposed that on 28th January 1976, he entered into a sale agreement with the defendants for the purchase of the suit property. The deceased paid the full purchase price through the Firm of M/s G. S. Sandhu & Co. Advocates who were handling the transaction on behalf of both parties. A transfer was signed by both parties but before it was lodged for registration, G.S Sandhu advocate passed on and the documents together with the title which had been deposited with the advocate could not be traced. The deceased averred that he took possession of the suit property thereafter and had remained in peaceful and uninterrupted possession for more than 20 years. The deceased annexed copies of land rent and rates payment receipts issued in his name.

5. In written submissions dated 8th June 2017, counsel for the plaintiff stated that the deceased and the defendants entered into a written contract for the purchase of the suit property pursuant to which the deceased made full payment and took possession of the suit property. He stated that the defendants had not disputed the existence of the sale agreement or the deceased's ownership of the suit property. Counsel relied on the case of **Public Wanduru vs Wanduru (1984) KLR 314** to submit that a purchaser in possession had an overriding interest under the Registered Land Act (repealed).

6. The court was referred to Section 38(1) of the Limitation of Actions Act and it was submitted that the deceased who took possession in 1976 had been on the suit property without interruption for 41 years. Counsel argued that although the deceased died on 10th April 2001, his

wife was substituted. Counsel cited the case of **Mwangi & another vs. Mwangi (1886) KLR 328** and Order 24 Rule 1 of the Civil Procedure Rules. Lastly, it was submitted that the suit herein was unchallenged since no response to the claim was filed despite due service.

7. I have considered the originating summons, the affidavit in support of the originating summons and the plaintiff's written submissions. I have also considered the relevant jurisprudential principles on the doctrine of adverse possession. The issue for determination is whether the plaintiff has satisfied the criteria for acquisition of title under the doctrine of adverse possession.

8. The law of adverse possession is well settled. Section 7 of the Limitation of Actions Act provides that an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person. Section 38(1) of the same Act provides that where a person claims to have become entitled by adverse possession to registered land, he may apply to the High Court for an order that he be registered as the proprietor of the land in place of the person then registered as proprietor of the land. A claim for adverse possession can therefore only be lodged against a registered proprietor. See **Wasui vs Musumba (2002) KLR 396**. Secondly, this court is the post 2010 successor of the pre-2010 High Court in matters relating to title to land.

9. The plaintiff has proved that the defendant is the registered owner of the suit property by presenting a certified copy of the title to the suit property. The deceased's evidence that documents relating to the sale agreement were deposited with the advocate and could not be traced following the death of the advocate is not disputed. Entry No 5 in the Grant is a caveat registered by the deceased on 19th June 1976 claiming purchaser's interest in the suit property under an agreement dated 28th January 1976. The sale agreement and the deceased possession in 1976 have not been disputed.

10. Similarly, the deceased's evidence in support of his claim of title under the doctrine of adverse possession is uncontroverted and satisfies the statutory and jurisprudential criteria for acquisition of title under the doctrine of adverse possession. However, because the plea for title under the doctrine of adverse possession is an alternative plea to the principal prayer, the same will not be decreed in view of the fact that the principal prayer has succeeded.

11. Consequently, in light of the uncontroverted evidence presented by the deceased, I hereby enter judgment for the estate of the late Jayantkumar Jamnadas Ruparel in the following terms:-

**a. It is hereby declared and ordered that the estate of the late Jayantkumar Jamnadas Ruparel has become entitled as purchaser to Land Reference Number 37/248 having paid to the defendants the full purchase price of Kshs 20,000 and having been in possession of the said land since 1976.**

**b. The defendants are hereby ordered to transfer the said property to the personal representative(s) of the late Jayantkumar Jamnadas Ruparel within 60 days. The estate shall bear stamp duty and related transfer expenses.**

**c. In default, the Deputy Registrar of the Environment and Land Court of Kenya at Milimani is hereby authorized to execute on behalf of the defendants all the necessary documents to facilitate the transfer of the said land to the estate.**

**d. There shall be no order as to costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF JULY 2018.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Ms Halima Abdi - Court Clerk