



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC ORIGINATING SUMMONS NO. 312 OF 2017

GRACE THIRINDI SAMUEL.....PLAINTIFF

VERSUS

JOYCE INOMBABU.....DEFENDANT

JUDGMENT

1. Plaintiffs claim is for adverse possession in respect of land parcel no. 148 – Akirang’ Ondu “A” adjudication section, which land is apparently owned by one Johana M’Maroo (deceased). Joyce Inombabu has been sued as the administrator of the estate of Johana.
2. The matter proceeded as a formal proof as the defendant did not enter appearance or file a defence.
3. Plaintiffs case is that Johana M’Maroo, the late husband of Joyce Inombabu had sold land parcel No. 1487 Akirang’ Ondu ‘A’ adjudication section to plaintiffs husband one Samuel Ncege Kiringa in 1986. Plaintiff and her family proceeded to build houses and plant crops. They have occupied this land from 1986 to date.
4. Johana apparently died before he could transfer the land to plaintiff and now defendant has refused to effect such transfer. PW 2, one Henry Mwithalii testified stating that he was aware that Johana had sold the suit land to plaintiff’s husband.
5. In support of her case, plaintiff produced the following documents as exhibits:
 - (i) A document titled as a land ownership letter.
 - (ii) A letter from the chief confirming that plaintiff is a wife of late Samuel
 - (iii) Pass book for the plaintiff
 - (iv) Demand notice
 - (v) Temporary grant.

Determination

6. An acquisition of land through a claim of adverse possession is operationalized by the law. Section 38 of the limitation of actions Act provides that: **“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, 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.”**
7. The acts mentioned in section 37 are the Government lands act (cap 280), registration of titles act (cap 281), land titles act (cap 282) and registered land act (cap 300). All these laws have been repealed and have been replaced with the land registration act.
8. P exhibit 1 (a land ownership document from Ministry of lands) indicates that the suit land is registered under the land consolidation act. This act primarily deals with the ascertainment recording & consolidation of rights and interest in land in special areas. In essence, this act deals with the transmission of rights and interest in land from one legal regime to another that is from communal land ownership to individual tenure system. The individual tenure system crystalizes once the title deeds are issued. Before then, the adjudication legal regime remains in the realm of ascertainment and recording of rights and interests in land.
9. The plaintiff’s claim is hence not provided for under section 37 and 38 of limitation of Actions Act.

10. Plaintiff's suit is therefore dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

HON. LUCY. N. MBUGUA

ELC JUDGE