



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO 80 OF 2016

RAJAB NANDWA AKIDA.....1ST PLAINTIFF

NESIRI PETER MUIA.....2ND PLAINTIFF

=VERSUS=

PATRICIA MARY DAVIDSON.....DEFENDANT

JUDGMENT

1. On 1/02/2016, the plaintiff brought an originating summons dated the same day seeking the following verbatim orders:

- a) *A declaration that the Plaintiffs Rajab Nandwa Akida and Nesiri Peter Muia are entitled to the entire title, possession, occupation and transfer of property namely L.R NUMBER 7741//7669(original No 7741/63/2) by adverse possession on account of continuous uninterrupted possession thereof for over 19 years since the year 1997.*
- b) *A declaration that property L.R NUMBER 7741//7669(original No 7741/63/2) if registered in the name of the defendant is held by the defendant in trust for Rajab Nandwa Akida and Nesiri Peter Muia.*
- c) *A declaration that the property L.R NUMBER 7741//7669(original No 7741/63/2) if registered in the name of the defendant be cancelled and transferred to the plaintiffs' name, plaintiffs having acquired title to the property by adverse possession.*
- d) *An order directing the defendant to execute and deliver to the plaintiffs within 7 days, a transfer of property L.R NUMBER 7741//7669(Original No 7741/63/2) together with the original title of the property, procure, execute and deliver all documents necessary to confer title of the property to the plaintiffs free from any encumbrances failing to which the deputy registrar of the High Court should execute the transfer.*
- e) *An order restraining the defendant whether by itself, agents, servants or otherwise howsoever from interfering with the plaintiffs and/or trustee servants and members access to quite possession of accessing, advertising, offering for sale, leasing, mortgaging, charging, transferring or assigning, subdividing and/or otherwise dealing with property namely L.R NUMBER 7741//7669(original No 7741/63/2).*
- f) *A declaration that the defendant is not entitled to enter or use a portion of plaintiffs' land and where an injunction should issue restraining the defendant whether by herself or her servants or otherwise howsoever from entering or using the said parcel of land.*
- g) *The costs of the summons to be paid by the defendant.*

2. The defendant filed a memorandum of appearance but did not file a replying affidavit. On 15/3/2017, this court directed the plaintiff to serve the summons on the defendant through a notice in the Daily Nation Newspaper. On 30/3/2017, a notice was carried in the Daily Nation Newspaper. There was no response by the defendant. The Originating summons is therefore unopposed. It is supported by an affidavit sworn on 1/2/2016 by Rajab Nandwa Akida.

3. The plaintiffs have deponed that they are entitled to be registered as the proprietors of L.R Number 7741/7669(original No 7741/63/2) (herein referred to as “**the suit property**”) since they have been openly and peacefully in adverse possession of the suit property for more than 12 years. They have stated that they have been in occupation of the suit property with their families since 1997 having taken possession of the suit property from the defendant without force and/or fraud and without the consent of the defendant. They have contended that they have been exercising all rights of ownership over the suit property for more than 19 years and they have been farming on the suit property without interruption from the defendant. They further contended that the defendant throughout the years has accepted their existence and has

been aware of their activities and by virtue of effluxion of time, the defendant is estopped from denying they have acquired title to the property. The plaintiffs contend that since they took possession they have made substantial improvements by putting up temporary and permanent structures in line with the user of the property and the defendant cannot deny their entitlements. The plaintiffs add that the defendant's title was extinguished by operation of law through the said open and uninterrupted adverse possession for over 19 years and that they will suffer irreparable loss and damage if the defendant is not restrained by an order of court from demanding vacant possession or dealing with the property. The plaintiffs urge the court to grant the orders sought.

4. Oral evidence was led in open court on 20/11/17. PW1 - Nesiri Peter Muia adapted his affidavit dated 1/02/16 as his sworn evidence in chief. He testified that he has been living on the suit property with his family since 1997. He added that he was not given permission to stay on the suit property. He stated that Rajab Akida Nandwa also stays on the suit property. He urged the court to grant him title under the doctrine of adverse possession. Among other documents, PW 1 produced a certified copy of Certificate of Title Number IR. 14116 as an exhibit.

5. PW2 Rajab Nandwa Akida testified that he resides on the suit property and he adopted his affidavit dated 1/2/2016 as his evidence in chief. He added that he came to Nairobi in 1996 and he started living on the suit property in 1997. He still lives on the suit property to date. He stated that no one has ever laid claim to the suit property or required him to vacate. He averred that PW1 is also living on the suit property and urged the court to grant the orders sought.

6. The plaintiffs filed written submissions on 18/12/2017. They submitted that their acts have served to extinguish the title of the defendant as the registered owner. They further submitted that under Section 7 of the Limitation of Actions Act, the registered owner's title was extinguished after the expiry of 12 years from the date of dispossession.

7. The Plaintiffs relied on the cases of; **Francis Gicharu Kariri v Peter Njoroge Mairu & Anor Civil Appeal No 293 of 2002**, **John Muange Kithiokoi v Ernst Hjalmar Fridolf Andreberg & Anor ELC No 103 of 2012 (OS)**; **Samuel Nyakendo v Samuel Orcho Onyaru, Civil Appeal No 24 of 2004**; and **Virginia Wanjiku Mwangi v David Mwangi Jotham Kamau (2013) eKlr** which outline the five basic conditions to be met to perfect the title of the adverse possessor. The Plaintiffs referred to Section 38(1) and Section 7 of the Limitation of Actions Act and Order 37 rule 7 of the Civil Procedure Rules 2010.

8. I have considered the originating summons together with the plaintiff's evidence and written submissions. I have also considered the relevant legal framework and the guiding jurisprudential principles on the doctrine of adverse possession. The single issue for determination is whether the plaintiffs have satisfied the criteria for acquisition of title under the doctrine of adverse possession.

9. In the instant case, the defendant did not file a statement of defence and did not tender any evidence at the trial. The averments of facts set out in the originating summons are therefore uncontroverted. Secondly, the plaintiffs have tendered uncontroverted evidence to the effect that they have had an interrupted and unchallenged possession of the suit property since 1997.

10. In the absence of a defence and controverting evidence, the court is satisfied that the plaintiffs have met the criteria for acquisition of title under the doctrine of adverse possession. Consequently, the orders sought in the originating summons are granted as prayed save that the vesting instruments will be executed by the Deputy Registrar of the Environment and Land Court and not the Deputy Registrar of the High Court.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF SEPTEMBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Mr Nganga holding brief for Mr Osundwa Advocate for the plaintiffs/Applicants

June Nafula - Court Clerk