



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

LAND CASE NO. 74 OF 2009 (O.S)

GEORGE MATUMBI.....1ST PLAINTIFF

JULIUS MUTHIRI.....2ND PLAINTIFF

VERSUS

ISAAC MURIUKI M'MUGWIKI.....1ST DEFENDANT

STEPHEN THIURU MUGWIKI.....2ND DEFENDANT

JUDGMENT

Introduction

1. The plaintiffs commenced these proceedings way of Originating Summons dated **11/6/2009** which was filed in court on **12/6/2009**. They sought the following orders:-

a. A declaration that the plaintiffs, George Matumbe and Julius Muthuri have become entitled by virtue of Section 38 of the limitation of actions Act cap 22 and Section 30 (f) of the Registered Land Act Cap 300 Laws of Kenya to be registered as joint proprietors by adverse possession, of two and a half (2½) acres out of LR No. Kiirua/Naari/1105, measuring approximately 1.58 hectares, in lieu of the defendants, Isaac Muriuki M'Mugwika and Stephen Thiuru Mugwika the present registered proprietors.

b. Costs of the suit and interest.

2. On **14/7/2014** the Honourable P. Njoroge, Judge, ordered that the plaintiffs application dated **19/3/2011** for injunction together with the original summons dated **11/6/2009** be served upon the defendants through substituted service by way of an advertisement in one of the leading local daily newspapers with a country wide circulation and pursuant to this a notice was placed in the daily nation of Tuesday **1/12/2015** address to the defendants notifying them of the suit. According to the record, that was done. However, the defendants did not file any response to the Originating Summons.

3. The main suit herein proceeded to hearing on the **18/6/2018** when the 1st plaintiff testified. He stated that the 2nd defendant had sworn the affidavit in the suit on behalf of both plaintiffs with his authority. The authority is dated **19/3/2014** and is in the record. He stated that the land is **2 ½ acres** which he bought from the 1st defendant's father. The agreement by which the land was purchased was produced as **P. Exhibit 1**. He stated that he started using the land but the seller never transferred the land. He urged that since **1977, 12 years** of occupation of the land by the plaintiffs had elapsed and prayed for an order of registration as the owner of the land. The green card in respect of the land was produced. He averred during the period he had in the land he had not been disturbed by any person.

4. I note that a copy of the title is exhibit as "**JM1**" in the originating summons. The agreement is exhibit as "**JM2**". The green card show the land is registered in the names of the defendants. I find that this claim is not opposed and I grant the prayers as sought in the original summons dated **11/6/2009**.

5. For clarity it is hereby declared that the plaintiffs, George Matumbe and Julius Muthuri have become entitled by virtue of **Section 38** of the **Limitation Of Actions Act Cap 22** and **Section 30 (f)** of the **Registered Land Act Cap 300** to be registered as joint proprietors by adverse possession, of two and a half (2½) acres out of **LR No. Kiirua/Naari/1105**, measuring approximately **1.58** hectares, in lieu of the defendants, Isaac Muriuki M'Mugwika and Stephen Thiuru Mugwika the present registered proprietors and that they should be so registered. It is hereby ordered that the Land Registrar shall register them as such and issue them with title documents thereto. There will be no orders as to costs.

Dated, signed at Kitale this **12th** day of **October, 2018**.

MWANGI NJOROGI

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

Delivered at Meru on this 31st day of October, 2018

JUDGE

ENVIRONMENT AND LAND COURT, MERU