



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 457 OF 2017

MUNGAI MBAE.....1ST PLAINTIFF

GRACE WANGECI MUNGAI.....2ND PLAINTIFF

VS

JAMES MWANGI NDUATI.....DEFENDANT

JUDGMENT

1. The suit was filed on 25/3/2003 by the Plaintiffs by way of Originating summons. The Originating summons is supported by the Affidavit of 2nd Plaintiff. Their claim is that;

- a) The Respondent's title to all that piece of land known as LOC.7/ICHAGAKI/1049 measuring 0.06 Hectares in the approximate be deemed and declared to have been extinguished through adverse possession of the Applicants.
- b) The Applicants be declared and registered as proprietors of the whole land known as LOC.7/ICHAGAKI/1049.
- c) In the alternative the Respondents being the registered proprietor of all that parcel of land known as LOC.7/ICHAGAKI/1049 measuring 0.06 Hectares in the approximate be declared and registered as trustee for the Applicants of the said title.
- d) Costs of this application be borne by the Respondent.

2. In the Supporting affidavit of the 2nd Plaintiff sworn for herself and on behalf of the 1st Plaintiff and the evidence given in support of the 1st and 2nd Plaintiffs claim is that the 1st Plaintiff was born 1955 and brought up on the suit land and continued his stay and occupation of the suit land even at the time this suit was filed. The evidence of the 2nd Plaintiff is that she was married to the 1st Plaintiff in 1980 and occupied the suit land as her matrimonial home. These facts are not disputed.

3. In the affidavit in reply and evidence by the Defendant is that the Defendant became the registered owner of the suit land in January 1987. In the Defendants own evidence he admits that he found the 1st and 2nd Plaintiff in occupation and possession of the suit land.

4. The 1st Plaintiff died after he had given evidence. The 2nd Plaintiff continued the suit filed by the 1st Plaintiff and herself.

5. In the evidence the Defendant alleges that he was also using part of the suit land for cultivation without being in occupation. The Court directed the District Commissioner of Maragua under Order 28 of the Civil Procedure Rules to prepare a report on the suit land. The report was filed in Court and evidence on it given by Geoffrey Mutegi Kaburu , the District Officer Maragua Division. In the said report this is what the DC said;

“I interviewed the following people who live in the immediate neighbourhood of the suit land.

Name	ID No.	Neighbour since
a) Gichuhi Njuguna	815889	1966
b) Mwangi Njuguna	5151036	1966
c) Kamau Mwangi	3561397	

- | | | |
|------------------------|---------|------|
| d) Morris Muge Njuguna | 356669 | 1966 |
| e) Patrick Muiruri | 3599930 | 1994 |
| f) Muriithi Ngugi | 1850487 | 1966 |

They were in agreement that the first person to settle in the piece of land was on Mr. Paul Njagi who was Mr. Mungai Mbae's father. This was around 1996 and he continued with un-interrupted occupation and use of the same up to 1981 when he died and was buried in the suit land.

6. It is in evidence that Paul Njagi left behind a widow and son (Mungai Mbae) who continued occupying and utilizing the land. In April 2003, the widow died and was buried in the suit land. Mr. Mungai Mbae and his family have been using this land since the death of his mother up to 27th May 2004 when one Mr. James Mwangi Nduati forcefully took about a quarter acre of the land which he is still using. Since then he has harvested French beans and is now planting bananas. The rest of the land is being used by Mungai Mbae's family. In it, there are four semi-permanent houses all under Mungai's family use. Crops currently in his portion includes bananas, Mangoes and avocados. There is also one cow which belongs to Mr. Mungai.

7. In the case of **Kimani Ruchire vs. Swift Rutherfords & Co. Ltd (1980) KLR 10** stated;

“...the Plaintiffs have to prove that they have used this land which they claim, as of right, nec vic, nec clam, nec precario.....The possession must be continuous. It must not be broken for any temporary purpose or by any endeavours to interrupt it or by way of recurrent consideration”.

8. From the foregoing these facts fall in place indisputably ;

- a) The Defendant became registered owner of the land in 1987, he found the Plaintiffs in occupation and possession of the suit land.
- b) The Plaintiffs occupation and possession of the suit land was not authorized by the Defendant.
- c) The Defendant became aware at the very least of the Plaintiffs possession and occupation when he was registered as owner as far back as 1987.
- d) The Defendant did not take any steps for example filing suit to assert ownership and/or seek eviction of the Plaintiffs.
- e) The Plaintiffs continued possession and occupation of the suit land which crystalized to a claim for adverse possession in 1999, 18 years from the time the Defendant was registered as owner and had knowledge of the Plaintiffs occupation and possession.

9. Taking the facts set out in the preceding paragraph, the Defendants title to the suit land was extinguished in the year 1999. In the circumstances the filing of suit for adverse possession for the Plaintiffs in the year 2003 is validated by extinction of the title of the Defendant. From the year 1999 to date the Defendant is a bare paper owner holding in trust the suit land for the Plaintiffs.

10. After hearing the case and recording of evidence of the witnesses of the parties the case proceeded by way of written submissions. I have read, understood and considered all the documents filed by the parties more particularly the pleadings, the oral evidence and the written submissions. It is from the documents and evidence that the matters set out in all the Paragraphs above are derived.

11. Having so considered the pleadings, evidence and written submission of the parties and the matters derived therefrom the Court makes the following orders;

- a) The Defendants title to all that piece or parcel of land LOC.7/ICHAGAKI/1049 measuring 0.06 Ha. be and is hereby declared extinguished by reason of adverse possession.
- b) The 2nd Plaintiff be registered as the absolute owner of all that parcel of land known as LOC.7/ICHAGAKI/1049.
- c) The Deputy Registrar of this Court do and is hereby mandated to sign all the documents that may be required to cause all that piece of parcel of land known as LOC.7/ICHAGAKI/1049 to be transferred and/or registered in the 2nd Plaintiff.
- d) The Defendant shall pay the 2nd Plaintiff's costs of the suit.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF OCTOBER 2018

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Mbugua HB for Tallam for the Plaintiffs

Wambui HB Kinuthia for the Defendant

Irene and Njeri, Court Assistants