



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 151 OF 2010 (O.S)

JACINTA MARIA KIILU.....PLAINTIFF

VERSUS

PIUS NGUI KISWILI.....1ST DEFENDANT

JOSEPH KAKII KISWILI.....2ND DEFENDANT

(Sued as Administrators of the Estate of Kiswili Nyile [deceased])

JUDGMENT

1. In the Originating Summons dated 28th July, 2010, the Plaintiff is seeking for the following orders:

a. That the Plaintiff herein is declared to be entitled by adverse possession for over twelve (12) years to 10.5 acres of land comprised in land title no. Mutonguni/Kauwi/1247 registered under the Registered Land Act Chapter 300 Laws of Kenya and situate in Kitui West District.

b. That the Plaintiff be registered as the absolute proprietor of 10.5 acres of land comprised in land title no. Mutonguni/Kauwi/1247.

c. That the costs of this Summons be awarded to the Plaintiff.

2. The Originating Summons is premised on the grounds that the Plaintiff has enjoyed continuous, uninterrupted and peaceful occupation of the suit premises since 1984 with the full knowledge of the Defendants, for a period exceeding twelve (12) years.

3. The Plaintiff deponed that the deceased is the registered proprietor of land known as Mutonguni/Kauwi/1247; that she took possession of the suit land in 1984 and that she has utilized a portion of land measuring 10.5 acres since then. The Defendants neither entered appearance nor filed a Replying affidavit to oppose the Originating Summons.

4. The suit proceeded by way of *viva voce* evidence. The Plaintiff, PW1, repeated the depositions in her Supporting Affidavit which I have already summarized above.

5. The Plaintiff produced in evidence the Grant of Letters of Administration that were issued to the Defendants and the Certificate of Official Search of Mutonguni/Kauwi/1247 measuring 48.0Ha. The Plaintiff also produced several Agreements of Sale that Kiilu Maingi and the Defendants entered into in respect to portions of the suit land.

6. The Defendants have not controverted the Plaintiff's assertion that she has been in possession of 10.5 acres of the suit land. Considering that the Plaintiff's assertion that she has been in possession and occupation of 10.5 acres of the suit land since 1984, and the late Kiswili Nyile having been registered as the proprietor of the suit land on 13th November, 1989, the Plaintiff has proved that she has been on a portion of the suit land as of right *nec vi, nec clam, nec precario* (no force, no secrecy, no persuasion).

7. 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 Acts, he may apply to the High Court (ELC) 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. That is what the Plaintiff has done.

8. Having proved that she is entitled to the suit land, I shall, which I hereby do, allow the Originating Summons dated 28th July, 2010 as follows:

a. The Plaintiff be and is hereby declared to be entitled by adverse possession to 10.5 acres of land comprised in a parcel of land known as Mutonguni/Kauwi/1247.

b. 10.5 acres to be excised from parcel of land known as Mutonguni/Kauwi/1247 and the same to be registered in the name of the Plaintiff.

c. Each party to bear his/her own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE