



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 78 OF 2018**

**REUBEN K. CHELAGAT.....PLAINTIFF**

**VERSUS**

**PAULINA KOBILO KIPKELWON (SUED IN HER PERSONAL**

**CAPACITY AND AS THE ADMINISTRATOR OF**

**THE ESTATE OF SYMON KIPKELWON CHEBET (DECEASED)...DEFENDANT**

**JUDGMENT**

**Reuben K. Chelagat** has come to court against **Paulina Kobil Kipkelwon** in her personal capacity as the administratrix of the Estate of Symon Kipkelwon Chebet claiming to have acquired 1¼ acres for land parcel **No. Baringo/Kapropita/308** measuring 2.00 Ha by adverse possession and for determination of the following issues:

- 1. Whether the applicant had acquired 1¼ acres of the above Plot of land by adverse possession for reasons set out in the affidavit of the applicant and such other grounds as may be adduced at the hearing thereof.***
- 2. The ownership of title of the 1¼ from the land No. Baringo/Kapropita/308.***
- 3. Whether the defendant ought to convey the said 1¼ acres of land parcel No. Baringo/Kapropita/308 to the plaintiff in furtherance to conveyance do execute instruments conveying the said portion of land to the plaintiff, failure which the Deputy Registrar of the honourable High Court or such other officer as the court may designate do not execute the said instruments conveying 6 acres to the plaintiff.***

He prays for a declaration be made that the applicant was in personal occupation of the 1¼ acres part of title No. Baringo/Kapropita/308 for over 12 years and that the defendant's right over the said 1¼ acres parcel of land had been extinguished by way of adverse possession upon expiry of 12 years during which period the applicant had peaceful open and uninterrupted occupation, having occupied the same since 1983. Moreover, that a declaration to be made that upon the expiry of 12 years, the defendant held the said parcel of land in trust for the applicant. Consequently, that the respondent holds the suit piece of land in trust for the applicant. That pursuant to the provisions of section 38 of the Limitation of Actions Act Cap 22, Laws of Kenya, the applicant herein be registered as the rightful owner of the aforesaid parcel of land.

The plaintiff ultimately prays that the respondent be ordered to execute all documents of transfer in respect of the said 1¼ acres, failure of which the Deputy Registrar of this honourable court be empowered to do so on its behalf. That the respondents be condemned costs for this suit.

The defendant was served but failed to enter appearance and or file a replying affidavit.

The evidence of the plaintiff is not controverted that he has been in possession of the suit parcel of land for more than 12 years, which possession has been peaceful, open and uninterrupted occupation.

The law in respect to adverse possession is now settled. For one to succeed in a claim of adverse possession he must satisfy the following criteria stated in the case of **Maweu vs. Liu Ranching and Farming Cooperative Society 1985 KLR 430** where the Court held;

“Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances”.

29. Has the Plaintiff proved adverse possession? In the case of **Samuel Miki Waweru vs. Jane Njeru Richu, Civil Appeal No. 122 of 2001**, the Court of Appeal delivered the following dictum:

“...it is trite law a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of, or in (accordance with) provisions of an agreement of sale or lease or otherwise. Further, as the High Court correctly held in **Jandu v Kirpal [1975] EA 225** possession does not become adverse before the end of the period for which permission to occupy has been granted.

**In Wambugu vs Njuguna (1983) KLR 172** the Court held;

***“Where the claimant is in exclusive possession of the land with leave and license of the appellant in pursuance to a valid agreement, the possession becomes adverse and time begins to run at the time the license is determined”.***

The plaintiff has proved on a balance of probabilities that he has obtained title by adverse possession. I do make a declaration that the applicant was in personal occupation of the 1¼ acres part of title No. Baringo/Kapropita/308 for over 12 years and that the defendant's right over the said 1¼ acres parcel of land had been extinguished by way of adverse possession upon expiry of 12 years during which period the applicant had peaceful open and uninterrupted occupation, having occupied the same since 1983. Furthermore, a declaration is hereby made that upon the expiry of 12 years, the defendant held the said parcel of land in trust for the applicant. That consequently, the respondent holds the suit piece of land in trust for the applicant. That an order is hereby made that under section 38 of the Limitation of Actions Act Cap 22, Laws of Kenya, the applicant herein be registered as the rightful owner of the aforesaid parcel of land. That the respondent be ordered to execute all documents of transfer in respect of the said 1¼ acres, failure of which the Deputy Registrar of this honourable court be empowered to do so on its behalf. That the respondents be condemned to pay costs for this suit. Orders accordingly.

**Dated and delivered at Eldoret this 25<sup>th</sup> day of October, 2018.**

**A. OMBWAYO**

**JUDGE**