

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 149 OF 2012 (OS)

STEPHEN KUNGUTIA RAIMUTI PLAINTIFF

VERSUS

ANDREW RATANYA MUTHURI DEFENDANT

JUDGMENT

1. Plaintiff produced as exhibit I, objection proceedings in case no. 378 where a decision was given on 14/12/1998, whereby plaintiff allegedly got the land parcel no. 1397. He avers that his brother acquired a title deed in respect of his portion about 1 acre and some points.
2. Plaintiff avers that when he went to get his title deed, he found it was in the name of defendant.
3. Plaintiff avers that he has settled on the land and he has planted tea bushes, coffee, avocado and gravellia trees. He rears livestock there. He has built a home there where his family lives.
4. Plaintiff also produced a green card to show that the land is in the name of defendant.
5. In his submissions, plaintiff has urged the court to allow the claim as he has met the criteria set out under section 38 of the limitations of actions act. He avers that pursuant to the green card produced as an exhibit, he has demonstrated that defendant is the owner of the suit land. He also claims that he has been in occupation of the suit land for a period of over 25 years. On this point plaintiff has cited the case of **Mweu Versus Kiu 12 An Ching And Farming Cooperative Society Ltd (1985) KLR 430** where the court stated that **“Adverse possession is a fact to be observed upon the land. It is not be seen in the title even under cap 300. A man who buys land without knowing who is in occupation of it risks his title just as he does if he fails to inspect his land for 12 years after he has acquired it”**.
6. Plaintiff has further submitted that section 38 of limitation of actions act provides for the acquisition of the land by a squatter after the expiry of 12 years as was held in the case of **Adnam vs Ealr of Sandwich (1877) 2 CBD 485** where the court held that: **“The legitimate object of all statutes of limitation is in no doubt to quiet long continued possession but they all rest upon the broad and intelligible principles that persons who have at some anterior time been entitled to land or other property or money have by default and neglect on their part to assert their rights slept upon them for a long time as to render it inequitable that they should be entitled to disturb a lengthened enjoyment or immunity to which they have in some sense been tact parties”**. Against this background plaintiff avers that he is entitled to be registered as the proprietor of the suit land.
7. In a claim for adverse Possession, claimants **“Have to prove that they have used this land which they claim as of right; nec vi, nec clam, nec precario (no force ,no secrecy, no persuasion).....The possession must be continuous. It must not be broken for any temporary purposes...”** – See COA Case No. 28 of 2014 Titus Kigoro Munyi vs. Peter Mburu Kimani.
8. It appears that the plaintiff has occupied the suit land for a very long time. He has developed the land. He has almost met the criteria of an adverse possessor. I say **almost** because there is a crucial point of disconnect which I will explain shortly.
9. Exhibit 1, proceedings in objection case no. 378 in respect of parcel no. 1397 and 1402 indicate that the court had visited the scene and had established that the two parcels were fully developed by the then defendants. Those defendants happens to be the current plaintiff and his brother. The court had also observed that the two defendants are the ones who lived in the disputed lands and their families. It had also emerged that the current defendant had never lived in the suit land. The decision in the objection proceedings indicated that the then defendants were the rightful owners of the land.
10. It appears that plaintiff’s brother eventually acquired his own title deed. However for the plaintiff the land was registered in the name of the defendant despite the fact that the decision in the objection proceedings had given the land to plaintiff.
11. The dispute concerning the suit land appears to have existed way back since 1963. By 14/12/98, the legal regime governing this land was the adjudication process, whereby the rights and interests of claimants were being ascertained so as to transition from the communal or customary land tenure system to the individual land ownership system. The suit land was registered for the very first time on 1.3.2004. This suit was filed in 2012 and therefore the requisite 12 year period had not matured by the time the case was filed. Time had run for 8 years from time of first registration. It is for this reason that the suit fails. The same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17TH OCTOBER, 2018 IN THE PRESENCE OF:-

C/A: Janet

Muchiri for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE