



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 149 OF 2017

MARK KITHINJI MBATIAH.....PLAINTIFF

VERSUS

WILBUR EARL HIGHTOWER JR.....DEFENDANT/RESPONDENT

JUDGMENT

1. Vide an originating summons filed on 9.5.2017, plaintiff is claiming entitlement to land parcel **No. Ntima/Igoki/1496** registered in the name of **Wilbur Earl HighTower JR** by way of Adverse Possession.
2. The case proceeded ex-parte. This was after defendant was served by way of substituted service and he failed to enter appearance or file a defence.
3. Only plaintiff testified. He relied on his statement filed on 3.5.2017 as his evidence. His testimony is that the suit parcel no. 1496 is near his land. The land was unoccupied and so plaintiff started using it in 1983. He built on the land and he also planted coffee trees and bananas and seasonal crops, trees and nappier grass. He also fenced the land.
4. In support of his case, plaintiff filed a copy of green card in respect of the suit land. Plaintiff avers that he has looked for defendant in vain.
5. In his submissions, plaintiff has relied on the case of **Nguti farmers Coop Society Ltd vs Ledidi and 15 others** to show that all the ingredients of a claim of adverse possession have been met in the present case.
6. **Section 17 of the Limitation of actions act** provides that “**Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished**”.
7. **Section 38 of the limitation of actions Act**, further provides that: “**Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court 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**”.
8. The only exhibit which has been availed to support plaintiff’s claim is a copy of the green card. It shows that defendant became the registered owner of the suit land on 8.1.1970 (though the document is barely legible). The suit land which is 1.23 hectares appears to have been charged to various banks including Kenya Commercial Bank, Barclays Bank and Consolidated bank at various times. But the land was apparently discharged on 19.8.1980. The green card was obtained on 17.7.2015. Plaintiff filed his suit in 2017 and he ought to have availed a search certificate to show the current status of the land.
9. Nevertheless, in view of the fact that the record of discharge of charges appears to be the latest status of the land going by the green card, then I am inclined to find that defendant is the registered owner of the land. Plaintiff’s claim that he has openly occupied this land since 1983 without interruption has not been controverted.
10. I therefore allow plaintiff’s claim in the following terms:
 - (i) It is hereby declared that Mark Kithinji Mbatiah has become entitled to land parcel No. Ntima/Igoki/1490 by way of adverse possession.

(ii) Plaintiff is to be registered as the proprietor of parcel no. Ntima/Igoki/1490 instead of Wilbur Earl HighTower JR.

(iii) The deputy registrar of this court is hereby authorized to sign all requisite documents to facilitate the aforementioned transfer of the land.

(iv) 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