



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 387 OF 2017(OS)

MIKAH KAMAU NDIRANGU.....APPLICANT

VS

NGANGA CHEGE.....RESPONDENT

KAMAU CHEGE.....RESPONDENT

JUDGMENT

1. The Applicant took out Originating Summons on the 2/7/2017 against the Respondents. In the Originating Summons the Applicant sought the orders *inter-alia*;

- a. That the Applicant be declared to become entitled by adverse possession of over 12 years to all that parcel of land under Land Act, 2012, the Land Registered Act, 2012 and the Land Registration Act Cap 300(repealed) and comprised in title No LOC 2/MAKOMBOKI/236.
- b. That the said plaintiff be registered as sole proprietor of all the said parcel of land namely No LOC 2/MAKOMBOKI/236.
- c. That the County Registrar Muranga do register the Plaintiff as the proprietor of land parcel No LOC 2/MAKOMBOKI/236.
- d. That the Respondents be ordered to pay the costs of the suit to the Applicant.
- e. That such further orders be made as may be just and expedient.

2. The application is supported by the affidavit of the Applicant sworn on the 30/5/2017 where she deponed as follows; the suit land was demarcated and registered in her name in 1977; That she and her family live on the suit land since 1977 to-date; that on the 17/10/2010 the Respondents fraudulently became registered as owners through an alleged order arising from PMCCC No 134 of 1999 at Muranga.

3. On the 25th August 2017 the Respondents were served with summons together with the Originating Summons but failed to enter appearance. The Applicant filed a request for judgment in default of entering appearance and defence within the stipulated time and thereafter listed the matter for formal proof.

4. At the hearing of the suit the Applicant led evidence and relied on her replying affidavit filed on the 2/6/17. She informed the Court that she was the registered owner of the suit land from 1977 to 2000 when the Defendants became registered owners vide a decree issued on PMCC 134 of 1999 which related to a burial dispute. That the Defendants were ordered to remove the remains of their father from the suit land. She informed the Court that she is in occupation of the suit land for over 12 years and the Defendants have not dispossessed her except for burying their father thereon.

5. The Applicant elected not to file any written submissions. Neither did she file any issues for determination by the Court.

6. The key issue for determination is; whether the Applicant has proved title by way of adverse possession.

7. I have perused the pleadings in PMCC 134 of 1999 in which the Plaintiff sued the Defendants seeking, *inter-alia*, declaration that she was the registered owner of the suit land LOC 2 /MAKOMBOKI/236. In defence the Defendants sought for orders that they are entitled to the suit land by way of trust. The PMCC Court determined the matter on 17/3/2000 and ruled in favour of the Defendants as follows;

- a. The late Chege Mothe was properly buried on his land.

b. The land in question being parcel No LOC 2 /MAKOMBOKI/236 be transferred to the Defendants.

c. The Executive Officer of the Court to sign all the documents to effect transfer to the Defendants.

8. It would appear that the Plaintiff was not evicted from the suit land and hence the filing of this current suit for adverse possession.

9. A claim for adverse possession is supported by the following factors;

a) Whether entry and continued occupation of the suit land is adverse to the person in respect of whom adverse possession is alleged.

b) Whether the occupation is open, continuous, peaceful and uninterrupted.

c) Whether entry and or occupation has not been disrupted in at least 12 years.

d) Whether entry is permissive.

10. In the present case the Respondents did not contest the suit against the Applicant. It is therefore not in dispute that the Applicant :

a) Occupies the suit land and such occupation was not authorized by the Respondents who are registered owner since 2000.

b) The occupation has been continuous since 1977 until the year 2000 when the Respondents got themselves registered through orders issued in PMCC No 134 of 1999.

c) Between the periods 2000-2017 the Applicant peaceably occupied the suit land without any disruption by the Respondents.

d) The Applicant has not been disposed nor handed over possession of the suit land to the Defendants.

11. Time therefore for purposes of calculating adverse started running in favour of the Applicant in the year 2000 when the Defendants became registered owners of the suit land. By 2012 title by way of adverse possession had accrued and vested to the Applicant. So much so that the Respondents though had a decree in their favour issued on 17/3/2000 to the effect that the suit land be transferred to them, they did not evict the Applicant. It would appear that the Applicant was left on the suit land in excess of 12 years. It is not open for the Defendants to evict the plaintiff pursuant to the judgment by dint of section 4(4) of Limitations of Actions Act, Cap 22 Laws of Kenya.

12. The Applicant's application succeeds and orders are granted as prayed.

13. The Applicant shall have the costs of the suit.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 22ND DAY OF NOVEMBER 2018.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Wandaka HB for Gacheru for the Plaintiff

Defendants 1 & 2 – N/A.

Irene and Njeri, Court Assistants