

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO 150 OF 2016 (OS)

CHARLES MBUGUA NJUGUNA.....PLAINTIFF/APPLICANT

=VERSUS=

GACHAU NYAGA.....DEFENDANT/RESPONDENT

JUDGMENT

1. The applicant took out an originating summons dated 22/2/2018 against the respondent seeking to be declared the rightful owner of Land Title No. LOC.16/KIARUTARA/697 under the doctrine of adverse possession. He urged the court to direct the Deputy Registrar of this court to execute transfer instruments in place of the respondent in the event of the respondent's failure to transfer the land to the applicant.

2. The originating summons was supported by the applicant's affidavit sworn on 22/2/2016. The originating summons is not opposed as the respondent did not file any response despite being served personally and through substituted service through a notice published in the Standard Newspaper on 22/12/ 2017. At the hearing of the originating summons, oral evidence was led by the applicant who adopted his sworn affidavit as his sworn evidence in chief. PW2, James Chege Muiruri, who was an employee of the applicant, also testified.

3. PW2, testified that he used to work for the applicant on the suit property from the year 1982 to 1995. He stated that he used to live on the suit property and he planted tea for the applicant. He further stated that no one claimed title to the land for the period he worked for the applicant.

4. It is the plaintiff's case that he acquired adverse title to the suit property pursuant to the doctrine of adverse possession. He contends that he has been in continuous, quiet, uninterrupted and complete control and use of the suit property since 1997. He produced photographs showing the developments on the suit property. He has planted trees and erected a shed on the suit property. He states that no one has laid claim to the suit property since 1997.

5. In his submissions, the plaintiff submitted that he has established his rights to the suit property by way of adverse possession. He relied on the case of **Public Trustees Versus Wanduru Ndegwa [1984] eKLR** where the ingredients for adverse possession were set out as continuous, uninterrupted and exclusive possession and for a period of less than twelve years. He also submitted that it was held in the same authority that entry into the land might initially be by permission BUT upon the possessor commencing action that clearly demonstrate adversity to the registered owners' rights, adverse possession commences.

6. I have considered the applicant's pleadings, evidence and submissions. The applicant's case is that he is entitled to the suit property as an adverse possessor. The single issue to be determined is whether the plaintiff has satisfied the criteria for acquisition of title under the doctrine of adverse possession. To establish adverse possession, a litigant must prove that he has both the factual possession of the land and the requisite intention to possess the land. Second, one must prove that he has used the suit land without force, secrecy and persuasion. Third, one must demonstrate that the owner had knowledge that the adverse possessor was in possession of the suit property. Fourth, the possession must not be broken or interrupted. In **Titus Kigaro Munyi V Peter Mburu Kimani Civil Appeal No. 28 of 2014**, the Court of Appeal held that computation of time starts from when there is actual or constructive knowledge by the registered proprietor.

7. The doctrine of adverse possession has its statutory underpinnings in **Section 7,9,13 and 38 of the Limitation of Actions Act**. The Court of Appeal examined the constitutionality of the doctrine of adverse possession in the context of the Constitution of Kenya 2010 in **Mtama Lewa versus Kahindi Ngala Mwagandi[2015]eKLR** and found that the doctrine does not offend the spirit and letter of the Constitution of Kenya 2010 on protection of the right to property.

8. In the absence of any opposition against the applicant's plea, the court is satisfied that the applicant has satisfied the criteria for acquisition of title under the doctrine of adverse possession. The net result is that the plea for declaration of title under the doctrine of adverse possession is allowed as prayed. Because the plea was not contested, there shall be no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF DECEMBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Wachira holding brief for Mr Mutiso Advocate for the Plaintiff

Court clerk - June Nafula