



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC NO 1907 OF 2007(OS)**  
**IN THE MATTER OF LIMITATION OF ACTIONS ACT**  
**AND**  
**IN THE MATTER OF THE REGISTERED LAND ACT AND**  
**LAND REFERENCE NUMBER KIAMBAA/KIHARA/T181**  
**BETWEEN**  
**1. NJUGUNA MANGARIA (DECEASED)**  
**2. WINSTON WARUIMBA NJUGUNA .....PLAINTIFFS**  
**=VERSUS=**  
**1. EVA MATINDI**  
**2. MARGARET GACIKU MATINDI .....DEFENDANTS**

**JUDGMENT**

The Plaintiffs herein *Winston Waruimba Njuguna* and *Njuguna Mangaria* (Deceased) by this Originating Summons dated **14<sup>th</sup> June, 2006** has sought for these declarations:-

- 1. That the Plaintiffs are entitled to be registered as proprietors of land parcel No. KIAMBAA/KIHARA/T181 under the Limitation of Actions Act on the ground that the plaintiffs have jointly and severally been in open and peaceful occupation of the premises since March, 1966, that is to say a period of over 12 years preceding the presentation of this summons.***
- 2. That the Plaintiff's occupation of the land parcel has been continuous as of right and without force and with the Respondents abandonment, and their right of claim to the land is by law extinguished.***
- 3. That the plaintiffs are entitled to costs of this summons.***

The Originating Summons is supported by the supporting affidavit of **Winston Waruimba Njuguna** who averred that the 1<sup>st</sup> plaintiff is his father. Further that in **February 1966**, the 1<sup>st</sup> Plaintiff was sold parcel **no. Kiambaa/Kihara/T181** by the 1<sup>st</sup> Defendant and immediately took possession of the same. He also alleged that the defendants are a husband and wife. He further alleged that their family had continuously lived on the parcel of land since the aforesaid occupation, peacefully openly and as of right with full knowledge of the Defendants and without interruption from anybody. It was his further allegation that he built his residential house on the said parcel with authority of the 1<sup>st</sup> Plaintiff in the year **1977** and has been working on the land since that date.

He further contended that the 1<sup>st</sup> Defendant without the Plaintiff's knowledge did in **1979** transfer the parcel of land to his wife, the 2<sup>nd</sup> Defendant as per annexure marked **WWN1**. It was his contention that despite the change of proprietorship in the official records, there has not been any interruption of my occupation of the premises by the 2<sup>nd</sup> Defendant regardless of her awareness, though over 25 years have since lapsed.

Therefore in light of the foregoing, the Defendants claim on the parcel of land is extinguished and the plots have the right to claim registration thereof by adverse possession. He urged the Court to allow the Originating Summons.

The Defendants though served with the Originating Summons and summons to enter appearance did not file any response. A request for judgment was filed on **2<sup>nd</sup> October, 2009** and interlocutory judgment was entered on **12<sup>th</sup> October, 2009**.

The matter proceeded for formal proof on **4<sup>th</sup> February, 2016** wherein **PW1, Winston Waruimba Njuguna** gave evidence. He relied on his affidavit that was sworn on **15<sup>th</sup> June, 2006** and stated that the land in issue is **Kiambaa/Kihara/T181** which land is registered in the name of **Margaret Gachiku Matindi**. He alleged that the land was registered in the name of **Margaret Gachiku** in the year **1979** and that initially the land was in the name of **Evans Matindi** who was registered in the year **1959**. **Evans Matindi** is the husband to **Margaret Gachiku** and that **Evans** sold the parcel of land to the plaintiff's father in **1966**. He further testified that he took possession of the parcel of land in **1977** and that nobody has disturbed his occupation on possession since then.

He urged the court to order that the said land be registered in his name as he had acquired title to it by virtue of adverse possession. He produced an abstract of title in the name of the 2<sup>nd</sup> Defendant as **Exhibit No. 1**. The plaintiff further filed written submissions through the Law Firm of **L. Maina & Co. advocates**. The Plaintiff relied on **Sections 7, 17 and 38** of the Limitation of Actions Act.

He also relied on the decided case of **Muchunu Mumbura vs Peter Kamau Chege HCCC No. 1654 of 1994.**

**Section 7 of the Limitation of Actions Act** provides that:-

***“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or if it is first accrued to some person through whom he claims to that person”***

Further Section 38 of the said Act provides that:-

***“where a person claims to have become entitled to adverse possession to land registered under any of the Acts cited in Section 37 of this Act, on 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 that is registered as proprietor of the land.”***

From the abstract of title produced in court the land in question is registered under the *Registered Land*

Act Cap 300 Laws of Kenya and it therefore falls under the Acts referred to in **Section 37** of Cap 22 Laws of Kenya.

The plaintiffs herein have brought an action to claim land by virtue of *adverse possession*. The principles to be considered by the court when determining a claim for adverse possessions have been settled in various decided cases. In the case of **Kimani Ruachane Vs Swift Rutherford & Co (1980) KLR 10**, the court held that:-

***“In a claim for adverse possession, the plaintiff has to prove***

***i. Continuous use of the land for 12 years without secrecy, force or evasion***

***ii. Knowledge of the owner’s of the occupation.***

***iii. Continuous possession without any break or interruption for 12 years.***

The plaintiff herein has alleged that his father ***Njuguna Mangara*** now deceased purchased the parcel of land ***Kiambaa/Kihara/T181*** from the 1<sup>st</sup> Defendant in the ***year 1966***. He also alleged that his family has been in continuous occupation of the parcel of land from the time of purchase to date. It was his testimony that he built his residential house on the suit land from the ***year 1977*** and has lived on the land since then. He also testified that in ***1979***, the 1<sup>st</sup> Defendant transferred the suit land to his wife ***Margaret Gaciku Matindi*** without the authority of the Plaintiffs.

The Court has indeed seen the abstract of titles and it is correct that the suit land was registered in the name of ***Margaret Gaciku*** on ***5<sup>th</sup> June 1979***. The Defendants have not filed any defence to controvert the Plaintiff’s allegation. It is also not in doubt that ***Njuguna Maina*** (1<sup>st</sup> Plaintiff now deceased) did place a caution on the suit land on ***19<sup>th</sup> July, 1982*** claiming purchaser’s interest. If the plaintiffs have been living on the suit land since ***1966*** and later 2<sup>nd</sup> Plaintiff built house on it in ***1977*** without any interruption from the Defendants and without secrecy or evasion, then they qualify to be registered as the proprietors of the suit property by virtue of adverse possession as provided by ***Section 38*** of the Limitation of Actions Act.

The 2<sup>nd</sup> plaintiff has alleged that he has been in continuous occupation of the suit property without any interruption. If that is the case, then the Defendants rights over the suit property has been extinguished by virtue of the long period that the plaintiffs have occupied and utilized the suit property.

Having now carefully considered the available evidence, the Court finds that the Plaintiff’s evidence is not controverted. The 2<sup>nd</sup> Plaintiff has therefore been able to prove his case on a balance of probabilities. For the above reasons, the Court finds that Plaintiff’s claim as stated in the Originating Summons dated ***14<sup>th</sup> June, 2006*** is *merited*. The Court consequently enters Judgment for the Plaintiffs against the Defendants as prayed in the Originating Summons in terms of prayers ***No. 1, 2 and 3***.

Judgment entered accordingly.

Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of January 2017.

**L.GACHERU**

**JUDGE**

In the presence of

Mr Kanuku holding brief for Maina Irungu for the Plaintiff

None attendance for the Defendant

Hilda : Court Clerk

**Court:**

Judgement read in open Court in the presence of the above stated advocate since it was a formal proof.

**L.GACHERU**

**JUDGE**