



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 434 OF 2015 (OS)

MARY NJOKI MUYA.....APPLICANT

VERSUS

FRANCIS MUSUNDI OMARI.....1ST RESPONDENT

MARY WANJIRU GITHATU.....2ND RESPONDENT

RULING

The application is dated 12.12.2015 wherein the applicant now prays that direction be taken in the suit, thus the originating summons to be converted into suit and the originating summons be deemed as plaint and that this suit be consolidated with Eldoret Environment and Land Case No. 248 of 2013. The application is based on grounds that the subject matter in this matter is land parcel number Eldoret Municipality/Block 14/1402 which is the same subject matter in Eldoret Environment and Land Case No. 248 of 2013.

Mr. Francis Musundi Omari filed a replying affidavit stating that he is the registered owner of the suit land having bought the land from one Mary Wanjiru Githatu.

The applicant submits that the two suits are proper for consolidation as the subject matter is the same, thus Eldoret Municipality/Block 14/1402. The issue for determination is the same thus who is entitled to ownership. The parties are the same save the 2nd defendant but whose interest is similar to the other parties.

The originating summons was filed on 11.12.2015 seeking determination of the following issues:

(i) Whether or not the applicant has been in occupation, possession and use of that parcel of land known as Eldoret Municipality Block 14/1402 since 1976 and whether the rights of the respondent have been extinguished by effluxion of time.

(ii) Whether or not the applicant should be declared the owner of the said land parcel No. Eldoret Municipality Block 14/1402 and the same be registered in the applicant's name, the land register be altered to reflect the applicant's name and title to issue.

(iii) Whether or not the 2nd respondent has and/or had any title and/or clean title to pass on to the 1st respondent and whether or not registration of the 1st respondent as the owner created a trust and/or was and is in trust of the applicant.

(iv) Who should pay the costs of this application?

The originating summons is based on grounds and facts that in the year 1976 or thereabouts, the applicant purchased and entered into the suit property, Eldoret Municipality Block 14/1402. The applicant's settlement has been peaceful, continuous, uninterrupted and adverse to the interest of the respondents and/or any other person. Twelve (12) years have lapsed since the inception of the applicant's occupation and/or use of the suit parcel in 1976. The applicant has acquired interest over that parcel of land known as Eldoret Municipality Block 14/1402. That the land parcel number Eldoret Municipality Block 14/1402 should be registered in favour of the applicant to protect her interests. That in the circumstances of the case, it is fair and just that the honourable court grants the orders sought. That the registration of the 2nd and 1st respondent respectively over the subject property was and is in trust for the applicant.

The application is based on the affidavit of Mary Njoki Muya who states that she bought land parcel Eldoret Municipality Block 14/1402 from one Paul Kemboi in 1976. That after the purchase, she took vacant possession of land known as Eldoret Municipality Block 14/1402. That ever since 1976, she has lived and/or been in occupation of land parcel No. Eldoret Municipality Block 14/1402. That this is the only land that her children and her knows and has lived on for over three decades and continue to live on it. That the respondents have been aware of her occupation of land parcel Number Eldoret Municipality Block 14/1402 and the alleged purchase of the said parcel of land knowing very well that she was in occupation of the said land violates her interest in the subject land. That the 1st respondent is now registered as the owner of land parcel Number Eldoret Municipality Block 14/1402. That she is informed by Mr. A. K. Nyairo, Advocate which information she verily believes to be correct that the said registration in favour of the 1st respondent is held in her trust as her right to the property already accrued long before the purported registration.

That she is advised by Mr. A. K. Nyairo, Advocate which advise she verily believes to be correct that the mere fact that the 1st respondent has obtained a title deed to land parcel Number Eldoret Municipality Block 14/1402 does not water down and/or take away her interest in the said parcel of land as provided for in section 28 (h) and (e) of the Land Registration Act, 2012. That the respondent has never been in occupation or use of that parcel of land known as Eldoret Municipality Block 14/1402.

That she is informed by Mr. A. K. Nyairo Advocate which information she verily believes to be true that under the Limitation of Actions Act Cap. 22, Laws of Kenya, a claim to land by a registered proprietor becomes extinguished upon expiry of twelve (12) years from the date another person took possession and the land vest in the other person who has been in peaceful, open and uninterrupted occupation of the suit land.

That her occupation and use of the land parcel Eldoret Municipality Block 14/1402 has been peaceful, uninterrupted and adverse to the rights of the respondent. That 12 years have since lapsed since the inception of her occupation of the respondent's land in 1976. That by adverse possession, the respondent's rights to the land she occupies has been extinguished.

I have considered the application and the replies and the grounds of objection and the submissions and do find that the parties herein are the same as the parties in Eldoret Environment and Land Court No. 248 of 2013 save for the 2nd defendant who is alleged to have been the 1st registered owner of the suit property. Essentially, the dispute in this matter is the same and therefore, there is need to consolidate the two matters to enable the disputes be determined once and for all.

I hereby order that the originating summons herein is deemed as the plaint and the supporting affidavit is deemed as the applicant's statement. This matter is consolidated with Eldoret Environment and Land Case No. 248 of 2013. Proceedings to be conducted in Eldoret Environment and Land Case No. 248 of 2013. The 2nd defendant in this matter to be treated as the 2nd defendant in 248 of 2013.

The plaintiff's pleadings in this matter 434 of 2015 to be treated as defence and counterclaim in 248 of 2013. The 1st respondent's respondent to the originating summons herein to be treated as reply to defence and defence to counterclaim. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 15th DAY OF JUNE, 2017.

A. OMBWAYO

JUDGE