



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC (OS) NO. 227 OF 2012

IN THE MATTER OF THE LIMITATIONS OF ACTIONS ACT CAP 22

LAWS OF KENYA

=AND=

IN THE MATTER OF LAND PARCEL NUMBER LR. 18111/470 NAIROBI

STEPHEN MURIITHI MUTUA MBOGO.....1ST PLAINTIFF

PETER KIBIRA GAKERE.....2ND PLAINTIFF

JOYCE NYOKABI.....3RD PLAINTIFF

PETER MIGWI.....4TH PLAINTIFF

=VERSUS=

STERLING DEVELOPERS LTD.....DEFENDANT

JUDGEMENT

1. The four Plaintiffs brought an originating summons in which they are seeking orders that they have acquired **LR No. 18111/470** by adverse possession. The land in issue is registered in the name of the defendant. The Defendant's advocates were duly served but on the hearing date, neither the Advocate nor the defendant's representative was in Court. The hearing therefore proceeded by way of formal proof.

2. The Plaintiff contend that they entered the suit property in 1990 when the same was vacant. They have since constructed both temporary and permanent houses on the land and have planted trees which are fully grown. That since they entered the land, they have been peacefully staying on it and that no one has ever threatened them with eviction from the land. They later learnt that the defendant had obtained title to the land and they are now apprehensive that the defendant might move to evict them.

3. I have considered the evidence adduced by the Plaintiffs which is not challenged. The only issue which has to be decided is whether the plaintiffs have acquired the land by way of adverse possession. For one to be declared as having acquired a particular land which has a known owner by way of adverse possession, the occupant must have been in *peaceful, continuous* and *uninterrupted possession* of the land for a period of 12 years. In the instant case, the documents produced by the plaintiffs show that the land in

issue was surveyed in the year 2004. According to the attached deed plan. Title to the land was issued to the defendant on 14th January 2005. Prior to the date of registration of the defendant as owner of the suit land, the land was Government Land. The defendant was the first registered owner.

4. The issue which then arises is whether the plaintiffs have been in occupation of the land for a period of 12 years from 2005. The law is clear that limitation period does not run against the Government. It therefore follows that the period prior to the registration of the defendant as owner of the suit property cannot be counted. The plaintiffs can only start counting time from the time the land was registered in the defendant's name. This suit was filed on 2nd May 2012. A simple calculation shows that the Plaintiffs had been on the suit land for slightly over seven years. This is short of the period of twelve years required by the law. I therefore find that the plaintiffs claim against the defendant cannot succeed. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, Signed and Delivered at *Nairobi on 31st* this day of *July, 2017*

E.O .OBAGA

JUDGE

In the Presence of :-

Mr Njenga for Mr Webale for Plaintiff

Court Assistant: Hilda