



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 144 OF 2014 (OS)

PETER NDERITU MUTAH.....1ST PLAINTIFF

ZACHARIAH MWANGI KABIRU.....2ND PLAINTIFF

EZEKIEL K. TANUI.....3RD PLAINTIFF

VERSUS

KARUGA NJENGA.....DEFENDANT

JUDGMENT

Peter Nderitu Mutah, Zacharia Mwangi Kabiru and Ezekiel K. Tanui have brought the application by way of originating summons against Karuga Njenga for a declaration that the applicants Peter Nderitu Mutah, Zachariah Mwangi Kabiru and Ezekiel K. Tanui have obtained title by way of adverse possession over a portion of land parcel No. I.R. 71310 measuring 5 acres, 4 acres and 4 acres having taken continuous uninterrupted possession of the portion nec vic, nec claim, nec precario since 1988, 1989 and 1991. That the respondent's title over the portion of land reference I.R. 71310, measuring 23 acres has been extinguished by dint of adverse possession, nec vic, nec clam, nec precario, continuously without interruption since 1988, 1989 and 1991. That consequent upon the foregoing, the respondent's title over a portion of land parcel No. I.R. 71310, measuring 13 acres has been extinguished by operation of law and the same be transferred to the applicants upon being excised. That a vesting order does accordingly issue, vesting a portion of land parcel No. I.R. 71310 measuring 13 acres to the applicants Peter Nderitu Mutah, Zachariah Mwangi and Ezekiel K. Tanui. That consequent upon 1, 2, 3 and 4 being granted, the respondent be ordered to execute subdivision and transfer to the applicants, of the portion they have acquired under adverse possession failing which the Deputy Registrar of the Environment and Land Court do execute the subdivision and transfer documents and the Land Registrar, Nairobi County do issue a fresh title deed in the name of the applicants Peter Nderitu Mutah, Zachariah Mwangi and Ezekiel K. Tanui. That the defendant/respondent do pay the applicants costs of the originating summons.

The application is supported by affidavit of Peter Nderitu Mutei who states that sometime in 1988 vide a sale agreement dated 6th December, 1988 he purchased from the defendant/respondent 5 acres from 23 acres of L.R. No. 9930 popularly known as Theluji Farm at a total consideration of Kshs.90,000 for which he paid in full at the signing of the agreement as acknowledged by the defendant/respondent. The sale agreement was duly attested by Kamau, Njuguna Advocate. That the said land was L.R. No. 9930 popularly known as Theluji Farm. That between 06.12.1988 to 11.11.1996 land reference L.R. No. 9930 was registered in the name of Karugu Njenga.

That on 12.11.1996, upon subdivision a certificate of title was issued and the title changed to I.R. 71310 but the title remained in the respondent's name and it is so registered to date. That he moved into land

reference I.R. 71310 in 1988 and he has been in occupation of the land since then to-date. That he put up a house on the said parcel of land I.R. 71310 and his brother David Kariuki Mutah has been in occupation since then and that his occupation of 5 acres has been open and uninterrupted for 25 years until 2nd August, 2013 when defendant/respondent through his Advocate Korir J. K. Advocates moved the Eldoret Chief Magistrate's Court under a certificate of urgency and filed a Miscellaneous Civil Application No. 55 of 2013, he indicated to court that the defendant/respondent is the lawful and registered owner of the property known as I.R. 71310 and obtained orders to vacate that property known as I.R. 71310 – situate at North of Eldoret Municipality.

The defendant through his agents/servants/employees went ahead and demolished all the structures on the said parcel of land, rendering him homeless. The defendant/respondent failed to disclose all the material facts and the orders obtained on 2nd of August, 2013 were made in absolute bad faith with the aim of denying him the right to own the property. That his occupation of I.R. 71310 has been adverse to the respondent's interest on land reference I.R. 71310 until sometime in August, 2013 when the defendant/respondent tried to evict him from the suit land.

The defendant/respondent has not managed to evict him nor exert the proprietary right to the portion he occupies on land reference I.R. 71310. The defendant/respondent's title to the portion he occupies on land reference I.R. 71310 has been extinguished. That he has acquired title to the portion he occupies by operation of law, adverse possession. The portion of land he occupies ought to be excised from land reference I.R. 71310 and the title thereto issued to him. That he has been on the suit land for more than 25 years and therefore the court ought to issue a vesting order vesting ownership of the portion of land he occupies to him.

Zacharia Mwangi Kabiru states that sometime in 1989 vide a sale agreement dated 5th April, 1989 he purchased from the defendant/respondent 4 acres from 23 acres of L.R. No. 9930 popularly known as Theluji farm at a total consideration of Shs.90,000 for which he paid in full at the signing of the agreement as acknowledged by the defendant/respondent. The sale agreement was duly attested by Kamau, Njuguna Advocate. That the said land was L.R. No. 9930 popularly known as Theluji Farm. That between 06.12.1988 to 11.11.1996 land reference L.R. No. 9930 was registered in the name of Karugu Njenga. That on 12.11.1996, upon subdivision a certificate of title was issued and the title changed to I.R.. 71310 but the title remained in the respondent's name and it is so registered to date. That he moved into land reference I.R. 71310 in 1989 and he has been in occupation of the land since then to-date. That he purchased the suit property for purposes of carrying out developments and cultivate maize thereon and he expect to earn income from the developments and sale of maize thereon. That he has peacefully carried out farming on the said parcel of land.

That his occupation of 5 acres has been open and uninterrupted for 25 years until 2nd August, 2013 when defendant/respondent moved the Eldoret Chief Magistrate's Court under a certificate of urgency and filed a Miscellaneous Civil Application No. 55 of 2013, where the defendant/respondent through his Advocate Korir J. K. Advocates indicated to court that the defendant/respondent is the lawful and registered owner of the property known as I.R. 71310 and obtained orders to vacate that property known as I.R. 71310 – situate at North of Eldoret Municipality.

Ezekiel K. Tanui states that sometime in 1988 vide a sale agreement dated 5th day of September, 1988 Peter Chitechi Wamukoya of Post Office Box 935, Kitale purchased from the defendant/respondent 4 acres from 23 acres of L.R. No. 9930 popularly known as Theluji Farm at a total consideration of Shs.68,000 for which he paid Kshs.40,000 at the signing of the agreement as acknowledged by the defendant/respondent. The sale agreement was duly attested by Kamau, Njuguna Advocate. That he then purchased the 4 acres from Peter Chitechi Wamukoya vide sale agreement dated 8th February, 1991 at total consideration of Kshs.80,000 for which he paid Kshs.50,000 at the signing of the agreement. The sale agreement was duly attested by Susan Kagwe Maira Advocate.

That he paid the balance on 31st May, 1991 and a copy of the final agreement was delivered at Birech & Company Advocates. That on 8th February 1991, the defendant/respondent drafted a letter to the firm of

Birech & Company Advocates confirming that Peter Chitechi Wamukoya had paid the agreed purchase price in full and was aware that Peter Chitechi Wamukoya had sold his portion to him and had agreed to attend the Land Control Board with him for the consent to transfer the parcel of land in his name. That the said land was L. R. No. 9930 popularly known as Theluji Farm.

That between 06.12.1988 to 11.11.1996, land reference L.R. No. 9930 was registered in the name of Karugu Njenga. That on 12.11.1996 upon subdivision, a certificate of title was issued and the title changed to I.R. 71310 but the title remained in the defendant's/respondent's name and it is so registered to date. That he moved into land reference I.R. 71310 and he has been in occupation of the land since then to date. That he bought the suit property from the defendant/respondent for purposes of carrying out developments and cultivating maize crop thereon. That he has peacefully lived on a portion of land I.R. 71310 until 2nd of August, 2013.

His occupation of the 4 acres has been open and uninterrupted for 14 years until 2nd August, 2013 when the defendant/respondent moved the Eldoret Chief Magistrate's Court under a certificate of urgency and filed a Miscellaneous Civil Application No. 55 of 2013 where the defendant/respondent through his Advocate Korir J. K. Advocates indicated to court that the defendant/respondent is the lawful and registered owner of the property known as I.R. 71310 and obtained orders to vacate that property known as I.R. 71310 situate at North of Eldoret Municipality. That the defendant through his agents/servants/employees went ahead and demolished all the structures on the said parcel of land, rendering him homeless.

The defendant/respondent failed to disclose all the material facts and the orders obtained on 2nd of August, 2013 were made in absolute bad faith with the aim of denying him the right to own the property. That since he has never known any other home for the last 25 years, he went ahead and put up another structure on the suit land where his family and him lives until to date. That his occupation of I.R. 71310 has been adverse to the respondent's interest on land reference I.R. 71310 for the last 21 years.

When the matter came up for hearing, Peter Nderitu Mutahi stated that he has been in occupation of the suit land since 1989, those are 26 years. He produced a certificate of title to prove that the defendant is the registered owner of the suit land. He placed a caution on the suit land. He farms on the land. Mr. Zacharia Mwangi Kabiru on his part demonstrated that he moved into the land in 1989 and has been in occupation since then. He has peacefully carried out farming on the land. Mr. Ezekiel K. Tanui has demonstrated that he has been in occupation for 14 years until 2.8.2013. His occupation has been with the knowledge of the defendant and has been interrupted.

I have considered the originating summons, the evidence on record and do find that the plaintiffs have satisfied this court that they have been in possession of the suit parcels of land for a period of more than 12 years with the knowledge of the defendant. Their possession has been continuous, uninterrupted and therefore, are entitled to the orders sought.

I do grant a declaration that the applicants Peter Nderitu Mutah, Zachariah Mwangi Kabiru and Ezekiel K. Tanui have obtained title by way of adverse possession over a portion of land parcel No. I.R. 71310 measuring 5 acres, 4 acres and 4 acres having taken continuous uninterrupted possession of the portions since 1988, 1989 and 1991. That the respondent's title over the portion of land reference I.R. 71310, measuring 23 acres has been extinguished by dint of adverse possession, and that consequent upon the foregoing, the respondent's title over a portion of land parcel No. I.R. 71310, measuring 13 acres has been extinguished by operation of law and the same be registered in the applicants' names. That a vesting order does accordingly issue, vesting a portion of land parcel No. I.R. 71310 measuring 13 acres to the applicants Peter Nderitu Mutah, Zachariah Mwangi and Ezekiel K. Tanui. That consequent upon, the respondent is hereby ordered to surrender title no IR 71310 for conversion into Land Registration Act 2012 and subdivision the subdivision and transfer to the applicants, of the portion they have acquired under adverse possession failing which the Deputy Registrar of the Environment and Land Court do execute the surrender, subdivision and transfer documents and the Land Registrar, Uasin Gishu County do issue a fresh title deed in the name of the applicants Peter Nderitu Mutah, Zachariah Mwangi and Ezekiel K. Tanui. That the defendant/respondent do pay the applicants costs of the originating summons.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 28TH DAY OF SEPTEMBER, 2017.

A. OMBWAYO

JUDGE