



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 164 OF 2014 (O.S)

KENNETH MWITI M'TURUCHIU PLAINTIFF

VERSUS

CHARLES MUGAMBI RINGERA DEFENDANT

JUDGEMENT

This suit was filed on 28.10.14 via the Originating Summons where the plaintiff claims that he has been in occupation of the land Ngusishi Settlement Scheme/1794 measuring 2 acres since 1994. He now claims entitlement to the suit land by way of adverse possession.

The respondent filed a response on 2.12.14 where he claims that he became the registered owner of the suit land through a Succession Cause No. 424/05 filed by his mother. He avers that he holds the suit land in Trust for his siblings.

He also denies that the plaintiff has been in exclusive possession of the land.

PLAINTIFF'S CASE

The plaintiff adopted his statement filed on 28.10.14 as his evidence. He has given an account of how he came to occupy the suit land. He was put in possession of this land by one M'Turuchiu Rutere (PW2) in December 1994.

Apparently PW2 had purchased 2 acres of land from the defendant's father. The 2 acres were to be hived from L.R. NO. Ngusishi Settlement Scheme / 604. The seller of the land died before the transfer could be effected.

Upon the death of DW1's father, his mother filed a Succession Cause No. 425/05 where the grant was confirmed on 26.11.08. Defendant here in became the administrator of the estate.

Plaintiff avers that the land he was occupying was subdivided and was registered as No. L.R Ngusishi Settlement Scheme / 1794 in the name of the defendant.

The plaintiff further avers that since 1994, he has always lived on that land. He has built a permanent house, he has installed irrigation system, he has planted trees and he has been occupying that land.

PW2 in his testimony confirmed PW1's averment that he has lived on the land for many years.

The plaintiff claims that he has occupied the suit land openly, exclusively and without interruption for a period of over 20 years.

In support of his claim, the plaintiff has produced as exhibits the following documents:-

- i) Certificate of official Search showing that the defendant is the registered owner of the land No. Ngusishi Settlement Scheme/1794.**
- ii) A sale agreement that is not legible.**
- iii) Acknowledgment receipt.**
- iv) Mutation Form.**
- v) Photographs of the plaintiff's development.**
- vi) Copy of the grant issued on 26.11.08 in the name of the defendant.**

DEFENCE CASE

The defendant testified as DW1 and stated that he is the owner of the parcel No. Ngusishi Settlement Scheme/1794 which is two acres. He adopted his witness statement as his evidence and he also relied on the list of documents dated 16/1/2015 and filed on 19/1/2015. The documents are:-

- Copy of application for confirmation of Grant.
- Death certificates of his mother and father.
- Temporary grant of letters of administration.
- Ngusishi Water Users Association document.

Defendant avers that plaintiff has never occupied the suit land and has not put any permanent buildings there as alleged.

I have perused the documents availed by defendant. The first 3 are not contested as they refer to the Succession Case. The 4th document is titled Ngusishi Water Users Association. The document is not legible and the Court was not told of its relevance in these proceedings.

This Court had marked the defence case as closed on 13.7.17 after the defence failed to call any further witnesses.

DETERMINATION

Having regard to all the evidence adduced herein, I find that the issues for determination:-

- Whether the Plaintiff has been in exclusive possession of the land.**
- Whether such occupation has been open and notorious.**
- Whether the occupation has been continuous and uninterrupted for a period of at least 12 years.**
- Whether the occupation has been non-permissive and adverse to the owner of the property.**

I find that the plaintiff has given an account of how he came to occupy 2 acres of land from parcel No. 604 which was registered in defendant's father's name. It is his adopted father (PW2) who had put him on this land. He had no permission to occupy that land from the owner. The plaintiff has occupied this portion of land up to date even though DW1 denies this. That portion of land is now NGUSISHI

SETTLEMENT SCHEME/ 1794.

I note that the plaintiff has even availed photographs to show that he is carrying out irrigation on this land which means that he is openly utilizing the land.

There is also no evidence that plaintiff's occupation of the land has been interrupted in any manner.

On the other hand, DW1 states that he stays at Ruiri. He has not challenged the plaintiff's claim to exclusive use of this land.

DW1 did not testify before me. I did not have a chance to see his demeanour. But the Judge who took his evidence recorded this about him:-

“the witness was jittery at all times and sometimes evasive”.

Defendant had by then testified that:-

“Kenneth Mwiti, the plaintiff has never lived on the land. I know him. I knew him after he filed this case.”

During cross examination defendant had changed tune and stated that:-

“I know Kenneth Mwiti from 1994. He used to visit Kabunya.....”

The foregoing evidence as well as the observation by the court paints a grim picture of the defendant. He is surely not a truthful witness otherwise, why would he say that he came to see plaintiff in court then state that he knew him in 1994?

I find that as rightly submitted by the plaintiff in *Githu Vs Ndeete Civil Appeal No. 24 of 1979*.

“the mere change of ownership of land which is occupied by another person under adverse possession doesn't interrupt such a person's adverse possession”.

CONCLUSION

I find that the plaintiff has proved his claim on a balance of probability .I therefore proceed to give orders as follows;

- 1) Plaintiff is entitled to the land parcel No. NGUSISHI SETTLEMENT SCHEME/1794 (two acres) by way of adverse possession.
- 2) An order is hereby issued for the defendant to execute all requisite instruments and or documents to effectuate the transfer to the plaintiff the land parcel No. NGUSISHI SETTLEMENT SCHEME/1794, failure to which the Deputy Registrar of this court is hereby authorised to sign any transfer documents on behalf of the defendant.
- 3) Defendant is condemned to pay costs of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 22ND DAY OF NOVEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet/Haway

Mwiti H/B for Muthomi for Plaintiff – present

Kaumbi H/B for Kiogora Mugambi for Defendant – present

Hon. L.N.MBUGUA

ELC JUDGE