



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ORIGINATING SUMMONS NO. 25 OF 2010

ENDELINA NTHENGU MATHENDUPLAINTIFF

VERSUS

FRANCIS NTWIKI MUKUI.....DEFENDANT

JANET KANYUA RWANDA.....DEFENDANT

J U D G M E N T

1. The initial suit was filed on 22.02.10 and was amended on 13. 07.11 while another amendment was done on 29.03.12. The only aspect of the suit that was being amended in all these instances was the heading of the suit.
2. A notice of appointment was filed on 13.01.11 by P.E.M Manjau for defendant. No other document was ever filed for the defendant.
3. Defendant died on 04.05.13. He was substituted with Janet Kanyua Rwanda via the Court Order of 09.07.15.
4. Way back on 21:10:10, directions had been given for the Originating Summons, to be heard by way of affidavit evidence. Submissions were to be filed thereafter.
5. The evidence captured in the affidavit of the Plaintiff filed on 22.02.10 is that the suit land Tharaka/Tinyai “A” /1011 is registered in the name of the Respondent and is 10 acres,
6. Plaintiff has stated that he has been in occupation of the land continuously, exclusively and without interruption since 1995.
7. I find that the copy of the Green Card availed indicate that Francis Ntwiki Mukui was registered as the proprietor of the Suitland in 1995.
8. The current Respondent was duly served with a hearing notice of the suit but she failed to turn up .Plaintiff’s evidence therefore remains unchallenged.
9. In the case of **Charles Muka Anyanga vs. Nyanweso Omunani (2004) eKLR**, it was held that , “**a claim of adverse possession succeeds or fails depending on whether there is evidence to show that applicant occupied the suit land adversely to the title of the owner continuously and exclusively for a period of not less than 12 years**”.
10. I find that on a balance of probability, Plaintiff has proved this case and I proceed to give the

following orders:-

- 1) It is hereby declared that Plaintiff has acquired title to the land Tharaka/Tunyai "A" 1011 by way of adverse possession.**
- 2) It is hereby declared that the Respondents rights and interests in the suit land are hereby extinguished by the Applicant's adverse possession of the land.**
- 3) An order is hereby issued that the Land Title No. Tharaka/Tunyai "A" 1011 is to be transferred to the Plaintiff.**
- 4) No orders as to costs.**

**DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 15TH DAY
NOVEMBER, 2017 IN THE PRESENCE OF:-**

CA: Janet/Haway

Kithinji H/B Mwenda Murango for Plaintiff

HON. L. N. MBUGUA

ELC JUDGE