



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 499 OF 2011

EDWIN NJOROGI GACHUIRE.....1ST PLAINTIFF

MARY WANGARI NGURUGWE.....2ND PLAINTIFF

=VERSUS=

WAWERU WAINAINA.....DEFENDANT

JUDGEMENT

INTRODUCTION.

1. The defendant is the registered owner of LR No. Karai/ Gikambura /T.191 (suit property). The plaintiffs filed an originating summons in which they are seeking an order that they have acquired the suit property by way of adverse possession.
2. Attempts to serve the defendant in person proved futile as his whereabouts were not known. The defendant was served through substituted service in the standard newspaper. The defendant did not enter appearance. The hearing proceeded by way of formal proof.

PLAINTIFF'S CASE.

3. The Plaintiffs testified that they have been on the suit property since 1963. The two have been utilizing the suit property jointly. They have put up houses in which they stay with their families. They have been living on the suit property without any interruption since 1963. In 1983, the first plaintiff lodged a caution against the title to the suit property to protect his interest. They therefore seek the court's orders that title to the suit property which is in the name of the defendant has been extinguished and that they should be registered as joint owners of the suit property in place of the defendant.

ANALYSIS

4. The plaintiff's evidence is not controverted. The law regarding adverse possession is that the plaintiff seeking to be registered as owner of a property by way of adverse possession has to demonstrate that he has been on the suit property for a period of 12 years prior to filing a suit for adverse possession. That possession must be adverse to the interest of the registered owner. The stay must be open and uninterrupted for 12 years.
5. In the instant case, the plaintiffs produced a green card which shows that the suit property was

registered in the name of the defendant on 9th September 1959. On 20th January 1983, the first plaintiff lodged a caution against the title. The whereabouts of the defendant are unknown and he has never made any attempt to remove the plaintiffs from the suit property. The plaintiffs have been on the suit property uninterrupted for more than 12 years.

CONCLUSION

6. The defendant's interest in the suit property has been extinguished by operation of law. The plaintiffs have proved their case to the required standards. Judgment is entered in favour of the plaintiffs against the defendants in the following terms:-

- a) *The plaintiffs have acquired LR No. Karai/Gikambura/T.191 by adverse possession.*
- b) *The Land Registrar Kiambu is hereby ordered to transfer LR No. Karai/Gikambura/T.191 into the names of the plaintiffs.*
- c) *The Deputy Registrar of the Environment and Land Court do sign all necessary documents to facilitate the transfer of LR. No. Karai/Gikambura/T.191 into the names of the plaintiffs.*
- d) *The plaintiffs to bear their own costs.*

Dated, Signed and Delivered at *Nairobi this 8th day of November, 2017*

E.O .OBAGA

JUDGE

In the absence of the Plaintiff's advocates who were aware of the date and time of delivery of judgement.

Court Assistant: Hilda

E.O .OBAGA

JUDGE