



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 429 OF 2012

STEPHEN KYOVE MUTISO.....APPLICANT

VERSUS

PETER MUTUNE KAVOLELYA.....RESPONDENT

JUDGMENT

1. This Judgment is in respect to the Applicant's Originating Summons dated 14th November, 2012.
2. In the said Summons, the Applicant is seeking for the following orders:
 - a. Whether the Applicant has acquired prescriptive rights over 0.28 Hectares of land parcel No. Mbooni/Kalawani/1138 to the Applicant herein.*
 - b. Whether the Respondent should provide costs of this Application.*
3. The Originating Summons is supported by the Affidavit of the Applicant who has deponed that on 6th June, 1983, he entered into an agreement to purchase parcel of land known as Mbooni/Kalawani/1138 (*the suit land*) from the Defendant for Kshs. 2,250; that on the said date, he paid a deposit of Kshs. 2,000 and that the Vendor has never transferred the suit land into his name to date.
4. The Applicant finally deponed that he has developed the suit land and has openly enjoyed uninterrupted possession of the suit land since 1983.
5. Although the Respondent was served with the Originating Summons, he did not file a response.
6. The matter proceeded for hearing by way of *viva voce* evidence.
7. The Plaintiff, PW1, informed the court that he purchased the suit land from the Respondent in 1983. The Plaintiff produced in evidence the agreement dated 6th June, 1983.
8. According to PW1, he took possession of the land immediately he paid to the Respondent Kshs. 2,000 and that the Defendant has never transferred the land to him to date.
9. It was the evidence of PW1 that the Respondent has never stopped him from utilizing the land and that he should be registered as the proprietor of the land.

10. The Plaintiff's advocate filed written submissions and authorities which I have considered.
11. The Respondent has not denied that he sold to the Plaintiff the suit property on 6th June, 1983.
12. The Respondent has also not denied that the Applicant has been in continuous, open and hostile possession of the suit land since 1983.
13. As was held in the case of *Haro Yonda Juaje vs. Sadaka Dzengo Mbauro (2014) eKLR*, the Limitation of Actions Act allows the bringing of actions for the recovery of land under certain conditions after the expiry of twelve (12) years.
14. Where a person claims to have become entitled to land by adverse possession, he is allowed by virtue of the provisions of Section 38 of the Act to apply to this court for an order that he be registered as the proprietor of the same.
15. The Plaintiff's assertion that he has been in possession of the suit land since 1983 with the knowledge of the Respondent has not been rebutted.
16. The Plaintiff produced in evidence an agreement dated 6th June, 1983 which confirms that he entered the suit land after purchasing it.
17. In the circumstances, the Plaintiff has proved on a balance of probabilities that he has been in actual possession of the suit land for twelve (12) years openly, continuously and without the permission of the owner.
18. For those reasons, I allow the Applicant's Originating Summons dated 14th November, 2012 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE