



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. NO. 250 OF 2011

- 1. GEORGE MBUGUA NJUGUNA**
- 2. NICHALS INDANGASI MAITA**
- 3. EVANGELINE NYAWIRA MURAGE**
- 4. PATRICIA W. CHEGE (being Registered**

Officials of Riruta Shade For Orphans Children's Home)..... APPLICANTS

VERSUS

REGISTERED TRUSTEES OF WORLD OUTREACH..... RESPONDENT

JUDGMENT

This suit was commenced by way of an Originating Summons dated 24th May 2011 in which the Applicants sought for orders that:-

- a. The Respondent being the registered proprietor of all that parcel of land known as Dagoretti/Riruta/S.666 (hereinafter referred to as the "suit property") have their title to the suit property extinguished through the adverse possession thereof by the Applicants.
- b. That the Applicants be declared and registered as proprietors of the suit property.
- c. That the costs of this suit be borne by the Respondent.

The Originating Summons was supported by the grounds appearing on its face alongside the Supporting Affidavit of Patricia W. Chege sworn on 24th May 2011. The court allowed the Applicants to serve the Respondent by way of substituted service which was done in the Daily Nation newspaper. The Respondent failed to file any response within the stipulated period of 30 days from the date of the advertisement and the court allowed this suit to proceed for formal proof by way of oral evidence.

Formal proof proceeded on 23rd September 2014 when the oral evidence of Patricia Wambui Chege was taken. In her testimony, she stated that she lives in Riruta Satellite where she looks after children of ages 6-17 years at Riruta Shade for the Orphans. She stated that she is 67 years old. She confirmed that she is

one of the Plaintiffs, alongside George Njuguna, the Chairman of the Project and Nicholas Maita, a Committee member. She also stated that the other Plaintiff, Evangeline Murage is their social worker. She confirmed that she had the authority of her co-Plaintiffs to testify in this case. She testified that the project called Riruta Shade for the Orphans was granted a licence by the Government to operate, having commenced in the year 1986. She further stated that she asked for a plot in Riruta Satellite and was given permission by the Councillor of the area the late Mbogo, the District Officer at the time and the Chief of the area to occupy the suit property. She confirmed that since commencing the project at the suit property in 1986, they have remained thereon to date. She confirmed that the children sleep on the plot with permanent housing done on both sides of the plot, one for the girls and the other for the boys. She confirmed that at the moment they have 38 children in the project. She further testified that the Plaintiffs discussed amongst themselves and decided to pursue the title to the suit property. She further stated that they approached the Registrar at the Lands Office and were advised to conduct a search on the suit property. She confirmed that they proceeded to conduct a search which revealed that a title to the suit property was issued to the Respondent on 11th March 1999. She confirmed that it is this title that the Plaintiffs wish to be extinguished on the ground of adverse possession. In her evidence, she produced a copy of the Lease in the name of the Respondent registered on 11th March 1999 as well as a Certificate of Official Search dated 5th October 2001.

The *issue* to be determined is whether the Applicants have established their claim to the suit property based on principle of adverse possession. Under **Section 38(1) of the Limitation of Actions Act**, where a person claims to have become entitled by adverse possession to land registered under any of the **Acts cited in section 37**, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land. For one to sustain a claim for adverse possession, he must demonstrate possession that is *nec vi, nec clam* and *nec precario*; that is, possession which is without force, without secrecy, and without permission. Such possession must also be accompanied by the necessary *animus possidendi*, which is an intention to acquire the land as one's own. Such possession must have been continuous and uninterrupted for duration of at least 12 years.

It is evident from the evidence produced in this suit that the suit property was registered in favour of the Respondent on 11th March 1999. The Lease was produced in evidence. The Certificate of Official Search dated 5th October 2001 also supports this position. In her testimony, Patricia Wambui Chege testified that she is the founder of the project known as Riruta Shade for the Orphans way back in the year 1986 and that she has been in occupation of the suit property from that date until now. This means that the project has been ongoing on the suit property since 1986 up to date which exceeds the statutory requirement of 12 years. It is also evident that the occupation of the suit property by the said project has been without force or secrecy. The intention to acquire the suit property as belonging to the project has also been demonstrated. In light of the foregoing, I am sufficiently satisfied that the Applicants have proved their case and do hereby grant their prayers as prayed in their Originating Summons. The Applicants shall also have the costs of this suit.

DELIVERED AND SIGNED IN NAIROBI THIS 29TH DAY OF JANUARY 2016.

MARY M. GITUMBI

JUDGE