



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC NO. 891 OF 2014(O.S)

MBARI KIONI..... APPLICANT

VERSUS

SALOME WANJIRU MWAURA.....RESPONDENT

JUDGMENT

The Applicant brought this suit by way of Originating Summons dated 2nd July 2014 seeking the following ORDERS:-

1. THAT the Plaintiff has for a period in excess of Twelve Years been in adverse possession of ALL THAT parcel of land comprised in Title Number Ruiru/Ruiru East Block 1/155 in Ruiru, Thika comprising by measurement Naught Decimal Five Naught (0.50) Hectares and consequently the Respondent's title thereto has been extinguished by virtue of Section 17 of the Limitation of Action Act (cap 22) Laws of Kenya.
2. THAT the Plaintiff be registered as the proprietor of the said parcel of land namely L.R. No. Ruiru/Ruiru East Block 1/155 in place of the Respondent in whose favour the land is currently registered.
3. THAT the Respondent do transfer at her own costs and expense the land comprised in Title No. Ruiru/Ruiru East Block 1/155 to the Plaintiff forthwith and in default of the Respondent signing, executing or endorsing the necessary documents or the transfer, the Deputy Registrar of this Honourable Court do sign, execute and or endorse such papers/documents to effect the transfer.
4. THAT an injunction order do issue against the Respondent prohibiting any transfer, transmission, alienations or any disposition of any interest or dealing in any other manner in the land comprised at Title No. Ruiru/Ruiru East Block 1/155.
5. THAT the Respondent do pay the costs of the suit.

The Originating Summons was supported by the Affidavit of the Applicant sworn on 2nd July, 2014 in which the Applicant stated as follows. In the year 1988, he purchased two parcels of land namely, LR No. Ruiru/Ruiru East Block/155 ("the suit Property") and L.R No. Ruiru/Ruiru East Block 1/154 ("Plot No. 154"). He purchased the suit property from Githunguri Ranching Company Limited and Plot No. 154 from another person who had been allocated the same by Githunguri Constituency Ranching Company Limited ("the Company"). The suit property and Plot No. 154 were adjacent to each other. After

purchasing the two parcels of land, he commenced development on the same. He put up on the two parcels of land a residential house and other ancillary developments. He has over the years occupied and resided on the said home peacefully without interruption from any third party. Plot No. 154 was registered in his name on 6th December 1991 and he was issued with a title deed on 27th February, 2008. In the year 2012 he sought clearance from Githunguri Ranching Company Limited (“the company”) so that he may be issued with a title deed for the suit property. In the process of seeking the clearance certificate from the said company, he learnt that the suit property was already registered in the name of the Respondent. The Respondent was registered as the owner of the suit property on 6th June 2002 and was issued with a title deed on the same date. The Respondent is a stranger to him and she has neither visited the suit property nor lodged a claim in respect thereof since he occupied the same in the year 1988 and the company has not furnished information on how the Respondent came to be registered as the owner of the suit property.

The Respondent was served with the Originating Summons by way of substituted service on 9th April 2015 through newspaper advertisement after attempts to serve her personally failed. The Respondent did not enter appearance to the summons. On 20th August 2015 the court gave directions that the Originating Summons be heard by way of affidavit evidence and written submissions. Applicant filed his submissions on 15th December 2015.

I have considered the Applicant’s Originating Summons together with the affidavit filed in support thereof. I have also considered the written submissions and the authorities in support thereof. In the case of **Salim vs. Boyd and Another (1971) EA 550**, it was held that for a claimant of land by adverse possession to succeed, he must prove that he has been in open, continuous and uninterrupted occupation of the land for a period of 12 years or more. In the case of **Kimani Ruchine & Another Vs. Swift, Rutherford Co. Ltd. & another (1977) KLR 10** Kneller J. stated as follows at page 16;

“The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, nec plecario (no force, no secrecy, no evasion).....The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”

As I have stated earlier in this judgment, the Respondent did not enter appearance. The suit is therefore not defended. The averments contained in the Applicant’s affidavit on how he entered the suit property, the developments he has carried out thereon and the period for which he has been in occupation of the same without any interference was not controverted. I am satisfied on the material before me that the Applicant has established his adverse possession claim over the suit property. The Applicant led uncontroverted evidence that he entered and occupied the suit property in the year 1988. He has demonstrated that as at 3rd July 2014 when he filed this suit, he was still in possession of the suit property. The Applicant also led evidence which was not challenged that his occupation of the suit property has been open, peaceful and uninterrupted.

For the forgoing reasons, I am satisfied that the Applicant has proved his claim against the Respondent on a balance of probability. Consequently, I hereby enter judgment for the Applicant against the Respondent as follows:-

1. I declare that the Respondent’s right to recover all that parcel of land known as L.R No. Ruiru/Ruiru East Block 1/155 from the Applicant has been extinguished by operation of law.
2. The Respondent shall transfer to the Applicant the said parcel of land within thirty (30) days from the date hereof failure to which the Deputy Registrar of this court shall be at liberty to execute all documents necessary to transfer the property to the Applicant.
3. The Applicant shall meet all the expenses and costs associated with the transfer of the suit property to his name.

4. Each party shall bear its own costs of the suit.

Delivered and Dated at Nairobi this 2nd Day of August, 2016

S. OKONG'O

JUDGE

In the presence of

Mr. Wachira for the Applicant

N/A for the Respondent

John

Court Assistant