



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 149 OF 2012**

**(FORMERLY HCC 51 OF 2004)**

**PAUL KIPTENAI K. BIRECH.....PLAINTIFF**

**VS**

**NANDIKO LUKHUMBEA & ANOTHER.....DEFENDANT**

**JUDGMENT**

Mr. Paul Kiptenai K. Birech (*hereinafter referred to as the plaintiff*) has sued Nandhiko Lukhubwa and Victorine Ruto (*hereinafter referred to as the 1st and 2nd Defendants respectively*) as former and current registered owners respectively of land parcel number **Uasin Gishu/Kimumu/2896**. He is seeking for orders that he be registered as the proprietor of land parcel Number **Uasin Gishu/Kimumu/2896** having acquired ownership and or title through adverse possession and the titles of the defendants be declared as having been extinguished. He has also prayed for costs of this originating summons .

The Originating Summons is based on the grounds that the first defendant was registered as the owner of parcel Number **Uasin Gishu/Kimumu/142** which was later caused to be sub-divided and one of the resultant sub-divisional portions being Parcel Number Uasin Gishu/Kimumu/2896 which he transferred to **Victorine Ruto** was purchased by the plaintiff on 1st day of August 1986 and the plaintiff has been in adverse possession of it as from that date to date.

That as the plaintiff has had uninterrupted possession of the said land since 1st August, 1986 he has acquired title by way of adverse possession and the titles of the defendant have been extinguished by the operations of the provisions of the Limitation Of Actions Act Cap 22 Laws of Kenya.

The Originating summons is supported by the plaintiff's affidavit whose import is that the plaintiff who lives at Race Course Estate in Eldoret Municipality bought a piece of land measuring half (0.5) of an acre from Nandhiko Lukhubwa on 1st day of August, 1986 for the sum of Kshs.7,300/= which amount of money was paid out to the latter in full and the said portion of land was part of piece of land then known as Uasin Gishu/Kimumu/142. The plaintiff claims to have taken immediate possession of the said portion of land and ever since he has been using it.

On 11th February 2004 he carried out a search at the Land Office at Eldoret Lands Registry and found out that the said Nandhiko Lukhubwa had caused the entire parcel of land to be subdivided and one of the resultant portions of land is Parcel Number Uasin Gishu/Kimumu/2896 measuring zero decimal two zero (0.20) hectares which is approximately half (0.5) of an acre and that is the portion that had been sold to the plaintiff. The said Nandhiko Lukhubwa had transferred the said parcel o land to one Victorine Ruto on 11/6/2003. The plaintiff believes that the said Victorine Ruto must have known that the land in question had been sold to the plaintiff as it is obvious that he was in possession of the same.

The plaintiff annexed photocopies of the Abstract of Title in respect of Uasin Gishu/Kimumu/142 and Uasin Gishu/Kimumu/2896 and claims to have had exclusive possession of this portion of land now known as Uasin Gishu/Kimumu/2896 measuring (0.20) hectares for over a period of twelve years (12) and he has acquired title by way of adverse possession. He therefore deposed an affidavit in support of his application that a declaration be issued by the court that this particular parcel be registered in his names and the interest of Nandhiko Lukhubwa and Victorine Ruto be declared to have been extinguished by the Provisions of the Limitations of Actions Act by way of adverse possession.

On the 12/11/2014, the matter was placed before P.W. Mbulika, Deputy Registrar who slated it for hearing on the 16/2/2013 on which date the plaintiff appeared but the defendant failed to attend and therefore after the court ascertaining the defendant was served, it proceeded with the hearing.

**Mr. Birech** testified that he bought a piece of land from Nandhiko Lukhubwa measuring 0.5 of an acre on 1st day of August 1986. That portion was contained in his entire parcel of land then known as Uasin Gishu/Kimumu/142 and he immediately took possession of the land sold to him.

He found out after carrying out an official search on 11th February 2004 that Mr. Lukhubwa later carried out a subdivision of his entire land and one of the resultant portion being the portion he sold the plaintiff was registered as parcel Number Uasin Gishu/Kimumu/2896. On 11/6/2003 the 2nd defendant got herself registered against this title and when the plaintiff inquired from Mr. Lukhubwa how that had happened he was at a loss to explain.

**Mr. Birech** then decided to sue both the defendants asking the court to have him registered as the owner of the parcel Number Uasin Gishu/Kimumu/2896 as he had exclusive possession of it since 1986.

I have considered the evidence on record and having heard the plaintiff, find that he has proved his case on balance of probabilities that the first defendant was the registered owner of parcel of land number Uasin Gishu/Kimumu/142 which was sub-divided with one of the resultant sub-divisional portions being Parcel Number Uasin Gishu/Kimumu/2896 which he transferred to Victorine Ruto despite the fact that the same had been purchased by the plaintiff on 1st day of August 1986 and the plaintiff had been in adverse possession of it as from that date to date.

The plaintiff therefore having had uninterrupted possession of the said land since 1st August, 1986 had acquired title by way of Adverse possession and the title of the 2nd defendant was extinguished by the operations of the Provisions of the Limitation of Actions Act.

The upshot of the above is that it is declared that the plaintiff has acquired title in Uasin Gishu/Kimumu/2896 by adverse possession and therefore he should be registered as the proprietor forthwith and the titles of the 2nd defendant are declared as having been extinguished. Costs of the suit to the plaintiff.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF MARCH 2015**

**ANTONY OMBWAYO**

**JUDGE**