



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 11 OF 2014

SILAH LEINA MOOTIAN.....1ST PLAINTIFF

JULIUS MOOTIAN.....2ND PLAINTIFF

JACKLINE CHESANG MOOTIAN.....3RD PLAINTIFF

STANLEY MOOTIAN.....4TH PLAINTIFF

SIMON KERETO MOOTIAN.....5TH PLAINTIFF

VERSUS

VERONICA NJERI MBURU.....DEFENDANT

JUDGMENT

(Suit by way of adverse possession; suit not defended; judgment entered for the plaintiffs).

1. This suit was commenced on 24 January 2014 by way of Originating Summons taken out pursuant to the provisions of Order 37 Rule 7 of the Civil Procedure Rules and Section 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya. It is the pleading of the applicants (whom I will also refer to as the plaintiffs) that they have acquired title, by way of adverse possession, to the land parcel Cis-Mara/Olpusimoru/502 which land measures 12.46 Hectares. The O.S is supported by the affidavit of Silah Leina Mootian, the 1st plaintiff. The respondent (whom I will also refer to as the defendant) could not be found and service was allowed to be effected by way of advertisement. An advertisement was placed in a local daily but no appearance was ever entered by the defendant. Directions were taken that the matter do proceed by way of viva voce evidence and the plaintiffs called 3 witnesses.

2. The totality of the evidence of the plaintiffs as set out in the supporting affidavit and in the oral evidence, is that the plaintiffs are a family. The 3rd plaintiff is step-mother to the 1st, 2nd, 4th and 5th plaintiffs, who are all brothers and sons of one Kimeses Ole Mootian (deceased) (Kimeses). The suit land was originally registered in the name of Kimeses . In the year 1980, Kimeses sold 4 acres of the land to one George Mburu Waiganjo so that he may be able to settle a hospital bill. A sale agreement was drawn, which is alleged to be fraudulent, for it showed that the land being sold was 40 acres and not 4 acres. It is stated that this could not be since the land is about 30 acres. Be as it may, the said George Mburu Waiganjo became registered as proprietor of the suit property on 9 December 1998. In the year 2011, the defendant came to the land and claimed that she is wife of George Mburu Waiganjo, and she stated that the said Waiganjo was deceased. She wanted to claim the land but Kimeses resisted as he was only aware

of 4 acres of land having been sold to Mr. Waiganjo. This prompted him to file a case before the Land Disputes Tribunal which held that the family of Kimeses is entitled to the suit land, save, for 4 acres of it. I have seen from the extract of the register that the defendant became registered as proprietor on 27 April 2011.

3. It will be noted however, that the plaintiffs do not now claim the land on the basis of the Tribunal award, but on the doctrine of adverse possession. It is their case that they have all along been on the suit land and have never parted with possession of it. The first plaintiff testified that he has been on the land since birth in the year 1973. He testified that all the plaintiffs have their houses on the land. He produced photographs to show that they farm on the land and have planted trees on it. The 3rd plaintiff wrote a witness statement which she adopted at the hearing. In it, she has averred that she got married to the late Kimeses in the year 1995 and settled on the suit land. She stated that even after the death of Kimeses, she has continued living on the suit property.

4. It is trite law that for one to sustain a claim for adverse possession, such person needs to demonstrate that he has been in open, quiet and continuous possession of the claimed property for a period in excess of 12 years. The evidence of the plaintiffs in this case, has not been controverted by the defendant, who failed to defend the claim. I have nothing to contradict the averments of the plaintiffs that they have been in open and continuous occupation of the suit property for a considerable duration of time. The 3rd plaintiff moved into the property in the year 1995 and the other plaintiffs were born on the property. The defendant and her predecessor in title, have not made any significant attempt to have the plaintiffs move out of the property. In essence, the occupation of the plaintiffs on the suit land has not been interrupted. The 12 years required to sustain the claim for adverse possession was attained 12 years from 9 December 1998, which is 9 December 2010.

5. I have no reason not to enter judgment for the plaintiffs. I do allow this suit. I declare that the plaintiffs have acquired title to the land parcel Cis-Mara/Olpusimoru/502 by way of adverse possession. I order that the plaintiffs be registered as proprietors of the suit property. I further direct the Deputy Registrar to execute all necessary documents to have the property transferred to the names of the plaintiffs.

6. As to costs, the defendant did not resist this suit. Her whereabouts are indeed unknown. I think in the circumstances, it is best that I make no orders as to costs.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 30th day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU

In presence of :

Mr Mwalo for applicants.

N/A for defendant who has not entered appearance.

Janet: Court Assistant

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU