



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO. 72 OF 2017**

**(FORMELY NAIROBI ELC CASE NO. 363 OF 2010)**

**MONICA WAKARIA MWANGI.....PLAINTIFF**

**VERSUS**

**MAHIIRA HOUSING COMPANY LTD.....DEFENDANT**

**JUDGMENT**

In the Plaintiff's dated 7<sup>th</sup> July, 2010, the Plaintiff averred that the Defendant owned a parcel of Land known as *L.R.10901/36*, Kahawa South of Ruiru Town (*the suit land*); that the Plaintiff applied for membership in the Defendant's Company and that after paying for membership, she made payment and was allocated plot number 349 which was to be excised out of *L.R. No. 10901/36*.

The Plaintiff's claim against the Defendant is for the Defendant to execute the completion documents to enable her secure the Title deed for plot number 349.

In its Defence, the Defendant averred that it did not allocate the Plaintiff plot number 349 of *L.R. No. 10901/36*; that it filed Milimani *CMCC No. 10923 of 2007* to vindicate its rights in law and that the said suit was dismissed on account of lack of jurisdiction. According to the Defence, the Plaintiff was allocated plot number 358 on *L.R. No. 10901/36* and did not complain and that even if the Plaintiff was allocated plot No. 349 on *L.R. No. 10901/36*, the same was forfeited by the Plaintiff for having not developed it for a period of eight (8) years.

In the Counter-Claim, the Defendant averred that the suit is time barred and that the Plaintiff's claim over plot No. 349 on *L.R. No. 10901/36* at Kahawa South of Ruiru town has been lost.

The Plaintiff, P.W.1, informed the court that she is a member of the Defendant with share certificate number 349; that she made payments to the Defendant and was issued with receipt numbers 349, 750, 570, 761, 2244, 3720 and 4507 and that the Defendant has decline to transfer in her favour the said plot.

P.W.1 produced in evidence plot certificate number 349 which was issued by the Defendant on 10<sup>th</sup> April, 1987. The said plot certificate indicates that the Plaintiff was entitled to plot number 349 measuring 50 x 80 feet on *L.R. No. 10901/36* at Kahawa South of Ruiru town. P.W.1 also produced the receipts that were issued to her by the Defendant between 1988 and 1987 in respect to plot number 349. The Defendant did not testify in the matter.

The Plaintiff's advocate submitted that the Plaintiff had proved that she is a member of the Defendant; that she paid for and was allocated plot number 349 and that the Defendant should execute the Transfer documents in favour of the Plaintiff.

The Defendant's advocate submitted that the suit is time barred by virtue of section 7 of the *Limitation of Actions Act*; that the cause of action arose in this matter in 1985 and that twelve (12) years have since lapsed. Counsel submitted that in any event, and

by dint of minute *No.15/86* passed on *5<sup>th</sup> November, 1986*, the Plaintiff lost ownership of the suit land for having not developed the land within a period of eight (8) years.

The Plaintiff's Claim that she was allocated plot *No. 349 in L.R. No. 10923/36* measuring *50 x 80* feet was not rebutted by the Defendant. Indeed, the Plaintiff produced in evidence of plot certificate dated *10<sup>th</sup> April 1987* for plot *No. 349*. The Defendant did not call any evidence to show that the Plaintiff was allocated plot number *358* and not plot *No. 349* as alleged in the Defence and Counter-claim.

From the Plaintiff and the evidence of the Plaintiff, it would appear that *L.R. No. 10901/36* is registered in favour of the Defendant, and the Plaintiff was only entitled to a portion thereof. After paying for the said portion between *1985* and *1987*, the Plaintiff was issued with the plot certificate on *10<sup>th</sup> April, 1987*. However, it was not until *29<sup>th</sup> July, 2010* that this suit was filed.

The Plaintiff's suit is not for adverse possession. Indeed, the Plaintiff has not made any reference to the fact that she is entitled to the suit land on the ground that she has been on the land for twelve years. All she wants in her Plaintiff is for the Defendant to transfer plot No. *349* in her favour.

*Section 7* of the Limitation of Actions Act provides that actions for recovery of land must be brought within *(12) years* from the date on which the right of action accrued. The Plaintiff's right of action accrued on *10<sup>th</sup> April, 1987* when she was issued with the plot certificate *No. 349*.

The Plaintiff's cause of action having accrued on *10<sup>th</sup> April, 1987*, the Plaintiff should have filed the claim herein on or before *9<sup>th</sup> April, 1999*. However, it was not until the year *2010* that this suit was filed, almost 23 years since the cause of action arose. The filing of this suit, which is not a claim for adverse possession, was therefore time barred. Indeed, although the issue of the suit being time barred was raised in the Plaintiff, the Plaintiff did not address that issue either while testifying or in her submissions.

Having found that the Plaintiff's suit is time barred, the suit is hereby dismissed but with no order as to costs.

Dated, signed and delivered at Thika this *6<sup>th</sup>* day of December, 2018.

In the presence of

No appearance for Nyabevi Plaintiff.

No appearance for Defendant

Court Clerk: Diana Mwendu

**O.A ANGOTE**

**JUDGE**

**6/12/2018**



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