



**REPUBLIC OF KENYA**

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

**ELC MISC. NO. 28 OF 2018**

**(FORMERLY NAIROBI MISC. CIVIL SUIT NO. 611 OF 1988 (O.S))**

**MARGARET WANJIRU NG'ANG'A**

**Alias GICHIRU NG'ANGA.....PLAINTIFF**

**-VERSUS-**

**THUO GAKONYA.....DEFENDANT**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CHAPTER 22 OF THE LAWS OF KENYA SECTIONS 37 AND 28**

**AND**

**IN THE MATTER OF PARCEL NO. KIAMBAA/KIHARA/T.58- ORIGINATING SUMMONS UNDER SECTION 37 AND 38 OF THE LIMITATION OF ACTIONS ACT CHAPTER 22 LAWS OF KENYA AND ORDER XXXVI RULE 3D OF CIVIL PROCEDURE RULES**

**JUDGEMENT**

1. By an Originating summons filed in court on 4/10/1988, plaintiff sought for orders to be declared as the rightful owner of land parcel no. *Kiambaa /Kihara/T.58 through adverse possession (the suit land)*. She also filed a supporting affidavit where she claims that she has been in an uninterrupted occupation of the suit land since *1968*.
2. Plaintiff therefore prays for a declaration that the defendant's title parcel *No. Kiambaa/Kihara/T.58* has been extinguished in her favour under Section 37 and 38 of the *Limitation of Actions Act Chapter 22* Laws of Kenya, and that she ought to be registered as the owner of the suit land.
3. Defendant never entered appearance. There is a court order of 31/7/2018 allowing the plaintiff to effect service upon defendant through advertisement in the Daily Nation and Standard Newspapers. This order was complied with and hence, the case proceeded for formal proof before me on 12/11/2018.
4. During the trial, I observed that plaintiff is a very old and frail woman. Still she did testify and she also relied on her supporting affidavit, the one filed with the Originating Summons. Her case is that on *10<sup>th</sup> June, 1968* she entered into an agreement with Defendant where by the latter was to sell to her the suit land. Defendant received payment of sh. 1,450 as consideration. Thereafter, plaintiff approached defendant with a view to transferring the said Plot to her name, but defendant ran away to unknown destination in Rift Valley. He never came back. On *14<sup>th</sup> February, 1972*, plaintiff placed a Caution against the said title.

5. In support of her case, plaintiff relied on the sale agreement of 10.6.1968 and the land registration receipt for the caution dated 14/2/1972. Plaintiff also availed a current certificate of official search showing that Land parcel no. ***Kiambaa/Kihara/T.58*** measuring 0.088 Ha. is registered in the name of ***Thuo Gakonya***.

6. I find that plaintiff's evidence has not been challenged. In particular, plaintiff has stated that she is still the one in occupation of the suit land and on this land, she raised her family. The Originating Summons makes reference to parcel no. T.38, but this must have been a typing error since the supporting affidavit, land registration receipt and the certificate of official search refer to T.58. I therefore find that plaintiff has proved her case on a balance of probability.

7. Final Orders;

***1) It is hereby declared that defendant's title to land parcel no. Kimbaa/Kihara/T.58 has been extinguished in favour of the plaintiff by way of Adverse possession.***

***2) An order is hereby issued for the cancellation of title no. Kiambaa/Kihara/T.58 which is in defendant's name and instead, plaintiff is to be registered as the owner of the said land.***

***3) The Deputy Registrar of the Court is hereby authorized to sign all requisite documents to facilitate the implementation of this Judgment.***

***4) The caution lodged on the land no. Kiambaa/Kihara/T.558 is hereby discharged in order to facilitate the transfer of the suit land from defendant to plaintiff.***

**Dated, signed and delivered at THIKA ELC this 5<sup>th</sup> day of December, 2018.**

**MBUGUA LUCY**

**JUDGE**

**5/12/2018**

In the presence of

**MARGARET WANJIRU- Plaintiff**

**KENNEDY MICHOMA - Court Clerk**



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