



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.12 OF 2015 (OS)

(Formally Mombasa ELC No. 323 of 2014)

OMAR BAYA KOMBO.....PLAINTIFF/APPLICANT

=VERSUS=

1. ENOS BUKO AYUBU

2. KANZE WILLI SHUMAA.....DEFENDANTS/RESPONDENTS

R U L I N G

1. On 18th December 2014, the Applicant filed an Originating Summons in which he is seeking to be declared the owner of parcel of land number Mgumopatse/Mizera/1042 measuring 86 ft by 43 feet by 355 feet having being entitled to it by adverse possession.
2. The Respondents have filed a Preliminary Objection dated 18th May 2015 in which they are seeking for the dismissal of the suit on the ground that the suit is bad in law because the title document in issue was issued to the Defendants on 15th October 2005 and that the Applicant has not been in adverse possession of the suit property for more than 12 years.
3. The Respondent's advocate filed brief submissions in which he submitted that adverse possession is the process by which a person can acquire a title to someone else's land by continuously occupying it for the prescribed period of 12 years.
4. Counsel submitted that one can only claim adverse possession against a registered owner; that the Respondent was registered as the owner of the suit property in 2005 and that the suit should be struck out on that basis alone.
5. I have perused the documents in support of the Applicant's claim. Indeed, the title deed in respect of the suit property was issued to the Respondents jointly on 5th October 2005.
6. Section 7 of the Limitation of Actions Act provides that an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him.
7. Section 13 of the Act on the other hand provides that a right of action does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run. Those two sections do restrict the kind of land the Act applies to.

8. There have been arguments whether the limitation period of 12 years for one to recover his land only accrues on the date a title is issued or before then, notwithstanding the provisions of Order 37 of the Civil Procedure Rules which requires the Applicant to annex an extract of the title on his affidavit.

9. Considering that the issue as to when time actually starts running has never been settled authoritatively, viz-a viz an unregistered land. I am of the view that this matter should proceed for hearing so that that issue is ventilated fully.

10. For those reasons, I dismiss the Preliminary Objection dated 18th May 2015 with no orders as to costs.

Dated and delivered in Malindi this **26th** day of **February**, 2016

O. A. Angote

Judge