



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO 129 OF 2014(OS)

**IN THE MATTER OF: SECTION 38 OF THE LIMITATION OF ACTIONS ACT AND ORDER
37 RULE 7 & 14 OF THE CIVIL PROCEDURE RULES (2010)**

AND

**IN THE MATTER OF: AN APPLICATION BY GEORGE MKUZI FOR ORDERS THAT HE BE
DECLARED AND APPROPRIATELY REGISTERED AS THE SOLE PROPRIETOR OF ALL
THAT PARCEL OF LAND KNOWN AS PLOT NO. 632 MGUMO PATSA/MAZERAS
MEASURING 0.71 HECTARES OR THEREABOUTS BY WAY OF ADVERSE POSSESSION.**

BETWEEN

GEORGE MKUZI.....PLAINTIFF

=VERSUS=

MARIA KAVUNA DZIMBA.....DEFENDANT

J U D G M E N T

1. In his Originating Summons dated 1st July, 2014, the Plaintiff is seeking for the following orders:

- (i) **THAT the Plaintiff herein GEORGE MKUZI do and is hereby declared to have been entitled by way of adverse possession of over 12 years to the parcel of land known as Plot No. 632/Mgumo Patsa/Mazeras measuring 0.71 Hectares or thereabouts and registered under the Registered Land Act (Cap 300) (now repealed) and situated at Mazeras within Kilifi County.**
- (ii) **That the Title Deed issued to the Defendant/Respondent herein the said Maria Kavuna Dzimba with respect to the said Plot No. 632/Mgumo Patsa/Mazeras be hereby cancelled.**
- (iii) **That the Plaintiff herein George Mkuzi do be registered as the sole and absolute proprietor of the said parcel of land known as Plot No.632/Mgumo Patsa/Mazeras measuring 0.71 Hectares or thereabouts and registered under the Registered Land act (Cap 300) (now repealed) Laws of Kenya and situated at Mazeras within Kilifi County.**
- (iv) **That the costs of this application and proceedings herein be borne by the Defendant/Respondent .**

2. The Defendant was served with the Originating Summon. She neither entered appearance nor filed a Replying Affidavit.
3. The matter proceeded for hearing by way of viva voce evidence on 2nd March, 2016.
4. The Plaintiff, PW1, informed the court that on 19th May 1987, he purchased the suit property from Rajah Kombo Rai, now deceased for Kshs.70,000.
5. It was the evidence of PW1 that after signing the agreement for sale, he took possession of the suit property and constructed permanent houses on it.
6. It was the evidence of PW1 that when he went to collect the title deed in the year 2011, he discovered that the suit property had been registered in favour of the Defendant.
7. PW1 informed the court that he should be declared and registered as the sole proprietor of the suit property.
8. PW2 stated that he witnessed the Plaintiff purchase the suit property from Rajab Kombo Rai.
9. According to PW2, the agreement of sale was prepared and signed in the office of the Chief of Rabai.
10. The agreement of sale between the Plaintiff and Rajab Kombo Rai dated 19th May, 1987 in respect to plot 632 was produced in evidence.
11. The evidence by the Plaintiff and PW2 has not been controverted by the Defendant.
12. On the basis of the Sale Agreement and the evidence of PW1 and PW2, I am satisfied that the Plaintiff has proved that he has been in the exclusive and continuous possession of the suit property for more than twelve (12) years.
13. For those reasons, I allow the Originating Summons dated 1st July 2014 as prayed.

Dated and delivered in Malindi this **11th** day of **March**, 2016.

O. A. Angote

Judge