



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC CIVIL SUIT NO. 68 OF 2012 (OS)

IN THE MATTER OF : LAND PARCEL NO. 215/11/MN

AND

**IN THE MATTER OF : AN APPLICATION FOR DECLARATION THAT THE
PLAINTIFFS/APPLICANTS HAVE OBTAINED
OWNERSHIP OF TWO THREE DECIMAL NINE ACRES
(23.9) ACRES OF THE ABOVE SAID LAND BY WAY OF
DIVERSE POSSESSION**

BETWEEN

EMMANUEL KARISA MALE & 265 OTHERS.....PLAINTIFF/APPLICANTS

-VERSUS-

JULIUS MASILA TUA

FLORA MARY MUEN.....DEFENDANTS/RESPONDENTS

JUDGEMENT

1. The two hundred and sixty six (266) plaintiffs filed this suit via an originating summons against the two defendants seeking an order that this Court do declare them as the proprietors of the 23.9 acres contained in plot No 215/11/MN having acquired the same by adverse possession. Upon such declaration being made, the plaintiffs prayed that they be registered as owners thereof. They have also prayed for costs of this suit.

2. The originating summons was supported by affidavit sworn by Emmanuel Karisa Male sworn on 17th April 2012. The originating summons was served upon the defendants by way of advertisement placed in the daily Nation newspaper of 13th November 2013. The defendants did not enter appearance thus the matter proceeded to formal proof.

3. On 14th September 2015, the first plaintiff Emmanuel Karisa Male testified on behalf of himself and on behalf of the two hundred sixty five plaintiffs. Mr Karisa Male hereinafter referred to as PW 1 testified that he is the chairman of Bengala Estate development group given authority to plead by his co – plaintiffs. He states that the suit plot No 215/11/MN is registered in the names of the defendants.

4. PW 1's evidence is that they have lived on this land for over 20 years. He continued that on the land, they have built permanent residential houses, schools, hospitals and churches. It is their case that they have never seen the defendants or their representatives come to demand for the land and that they have been paying land rates. He urged the Court to declare them as owners so that they can be issued with a title deed.

5. The plaintiffs' advocates then filed written submissions. He gave a summary of the evidence on record adding that the plaintiff had proved a case. To support the claim, he has cited the case of **Wanje vs Saikwa (2) (1984) KLR 284 and Kasuve vs Mwaani Investments LTD & Others (2004) EA 81**. The advocate submitted that the registered owners of the suit parcel discontinued their possession for a long period therefore the plaintiffs ought to be registered as proprietors of the parcel of land No 215/11/MN.

6. The evidence presented by the plaintiff has not been challenged. When the plaintiffs filed this suit they annexed to their supporting affidavit authority to plead signed by the 2nd – 266th plaintiffs giving the 1st plaintiff permission to testify on their behalf. They have also annexed certificate of title showing the defendants were registered as owners of the suit land on 7th July 1979.

7. The plaintiffs annexed a certificate of search as at 29th November 2010 showing the land is freehold, is not incumbered and showing the defendants as the registered owners as joint tenants. They did include copy of the application for the postal search and receipt for the payment made. The plaintiffs further annexed photographs of several houses which they plead are on the suit land.

8. The documents annexed prove that indeed the defendants are the registered owners of the suit property. The photographs also reveal that the land is built and PW 1 told the Court that they are the owners of these buildings and the said buildings are on the suit land. This averment has not been controverted and this Court therefore has no reason to disbelieve them believes them.

9. In a claim for adverse possession, the claimant is required to establish the following ;

i) The title is in the name of the defendant.

ii) The claimant has been in occupation for over 12 years.

iii) The occupation must be continuous, open and adverse to the interest of the registered owner of the land.

10. In the instant claim, the plaintiffs have proved that they have been on the land for over 12 years, and have built up the place therefore dispossessed the registered owner of any intended use for the land. Since there are several houses, schools, hospitals and churches built, the occupation is therefore open. The plaintiffs have thus met the ingredients of a claim for adverse possession. I am thus satisfied that the plaintiffs' case is proved. Accordingly I do hereby declare that the plaintiffs have acquired the property 215/11/MN by adverse possession. I do also give the order that they be registered as owners of the suit land in place of the defendants. The orders in the plaint are allowed with costs.

Judgement dated and delivered in Mombasa this 22nd day of April 2016

A. OMOLLO

JUDGE