



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENT AND LAND CASE NO. 16 OF 2016**

**WINSTONE WABUKE MALIBISI.....APPLICANT**

**AND**

**CLEOPHAS WANYAA WERUNGA.....RESPONDENT**

**JUDGEMENT**

[1]. The Plaintiff filed this Originating Summons on 11/2/2016 and presented the following questions for determination by the Court

(1) Whether the said WINSTONE WABUKE MALIBISI has acquired the title to 3 acres of Land Parcel No. NDIVISI/NDIVISI/276 for having been in adverse possession of the said parcel of land for a period exceeding 12 years thereby acquiring proprietary interest in the said land and whether he should be registered as the legal proprietor thereof.

(2) Who should pay the costs of this application.

[2]. He supported the Originating Summons by an Affidavit of Support sworn on 11/2/2016. In that Affidavit he swore that his father Opicho Wabuke had occupied and worked 3 acres of land parcel Ndivisi/Ndivisi/276. That after his death he continued staying on the 3 acres of the said land which had been separated from the rest of the land by a stream. He argued that the occupation of his father and his was adverse to the interests of the registered proprietor. He attached a search certificate of the said land. He told the Court on oath that he has been on the suit land for a period of over 30 years. He averred that the defendant does not live on the land. Further that, it is only the respondents brothers who live on the land and that the portion they occupy is separated from his portion by a stream that passes through the said suit land.

[3]. The applicant called a witness George Isaac Wamamile who gave evidence that he had known the applicant as his neighbor. That his land was Ndivisi/Ndivisi/471. He averred that Ndivisi/Ndivisi/276 was occupied by the Applicant's father one Winstone Wabuke Malibisi. He said that the one Wanyama C Werunga does not live on the land. His brothers use the land. And that the portion they use is separated by a stream. He said that the portion used by the respondent is 2½ acres.

[4]. The respondent who was served never gave any evidence. The applicant then closed his case. The issue for determination is whether the applicant has made out a case for adverse possession.

[5]. From the evidence adduced in Court, it is apparent that the applicant has been living on the suit land for a period of over 30 years. The portion that he has occupied is clearly defined. A stream separates the side he continues to use and the portion used by the brothers of the respondent. He has not been asked to move and vacate, out of the suit land by anyone over the period. He has clearly dispossessed the registered owner of the portion he occupies of three acres or thereabouts. I find that he has acquired the portion he occupies by adverse possession.

The said portion shall be registered on his name. The executive officer of this Court shall execute the registration documents in his favour. This suit was not defended so each party shall bear their own costs.

Judgment read in Court.

**Dated, signed and delivered on 20<sup>th</sup> September, 2016.**

**S. MUKUNYA**

**JUDGE.**

**In presence of:**

Joy/Gladys - Court Assistants

Plaintiff - Present

Defendant - Absent