



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC CIVIL SUIT NO. 196 OF 2012 (OS)**

**KITSAO MENZA NZAI.....PLAINTIFF**

**-VERSUS-**

**DAVID EDGER OMWANGO.....DEFENDANT**

**JUDGEMENT**

1. The plaintiff sued David Edge Omwango by way of his Originating Summons dated 12<sup>th</sup> September 2012 seeking orders to be declared as owner of all that piece of land known as plot No 305/II/MN (CR. No 1178) by way of adverse possession. Upon being declared as owner of this land, the plaintiff also sought an order that he be registered as the owner/proprietor of the said parcel 305/II/MN hereinafter referred to as the “suit land”.

2. The suit papers were served upon the defendant by placing advertisement both in the Daily Nation and Standard newspaper of 2<sup>nd</sup> September 2013 and 4<sup>th</sup> September 2013 respectively. The defendant failed to enter appearance within the prescribed time. Subsequently the plaintiff listed the suit down for hearing on 29<sup>th</sup> July 2015 and caused the hearing notice to be served upon the defendant by advertisement in the dailies. The defendant did not present himself before Court on the date set to defend the suit. The case thus proceeded to hearing unopposed.

3. On 29<sup>th</sup> July 2015, the plaintiff Kitsao Menza Nzai testified. He told the Court that he is 70 years old and lives at Utange in Bamburi. He came to Bamburi with his father when he was about 5 years old. The land he lived on belonged to his father and he planted trees on it. The plaintiff lives on the suit land with his brothers and their children and their children's families. He continued that no one has ever come to claim the land although records show it belongs to the defendant. The witness produced a copy of the title deed and postal search as Pex 1 and 2. He also produced photographs of houses on the land as Pex 3. The plaintiff added that he buried his parents on this land. He urged the Court to grant him an order declaring him as the owner of the suit land plus costs of the suit.

4. The plaintiff's counsel did not file any submission and left it to Court to render its decision. The copy of the title deed and postal search reveals the defendant is the registered owner of the suit parcel of land. The plaintiff also produced photographs showing they have houses on the land and are growing crops on it as shown in Pex 3(a) – (g). For a claim of adverse possession, there is need to prove possession which in my view the plaintiff has proving by showing evidence of their houses and stating that they are living on the land.

5. The plaintiff stated in the grounds in support of the originating summons that he moved on to this land in 1990 and has been in open and peaceful occupation to date. No contrary evidence was presented to counter these averments by the plaintiff. It follows that the plaintiff has proved his case that he has been in open and peaceful occupation of the suit land for over 12 years and therefore entitled to be declared as the owner thereof. Consequently, I make a finding that the plaintiff has proved his case on a balance of probabilities. I do and hereby declare him as the adverse possessor of plot No 305/II/MN. The Registrar of titles Mombasa is directed to register the plaintiff as proprietor of the suit land forthwith in place of the defendant. The suit was not defended so I order the plaintiff shall bear his costs of the suit.

**Judgement dated and delivered in Mombasa this 27<sup>th</sup> day of November 2015.**

**A. OMOLLO**

**JUDGE**