



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 578 OF 2011 (O.S.)**

IN THE MATTER OF: The Registered Land Act Cap. 300 of the Laws of Kenya

Registration of Titles Act Cap. 281, Laws of Kenya,

Land Use: Residential

IN THE MATTER OF: Freehold Interest in Parcel Number 1498 (Original No. 466/2 MAINLAND  
NORTH SECTION I CR.NO. 14188, Area 2.184 acres

IN THE MATTER OF: Limitation of Actions Act Cap. 22 of the Laws of Kenya

(Adverse Possession)

BETWEEN

1. TASSYSIAS SARRY KUDIRA
2. PETER OMARI KENANI
3. AISHA FADHILALI
4. MAGGY MALOMBO RAI
5. HUSSEIN MOHAMED MTSUNGA
6. LUCY K. KINOTI
7. FESTUS NTONJIRA
8. MALIQ IBRAHIM ABDULLAH
9. ABDALLA MBARAK OMAR

KARISA JOSEPH KENGA

10. MOHSEN SHARIF SWALEH

10. MATHIAS LENJO MWAWASI
11. JONATHAN KOLONGO RYANGO
12. PETER MBURU TURUNGA
13. DZUWARE LWAMBI MUNGA
14. DUNCAN OWINO OTIENDE
15. CONSTANSIA ELIZABETH NABWIRE
16. ANTONY OMONDI
17. JUMAA NGUMBAO NDZOMBA

18. MWALIMU HAMISI MASITO ..... **PLAINTIFFS**

**(Suing on their own behalf and on behalf of the squatters/residents residing upon the suit property  
Plot No. 1498 (Original No. 466/2 ) MN/I measuring 2.184 acres)**

AND

**DMB INDUSTRIAL FINANCE LIMITED .....DEFENDANT**

**JUDGEMENT**

[1] The Plaintiffs filed this Originating Summons dated 15<sup>th</sup> day of September 2011 against the Defendant praying for determination of the question whether they have been in uninterrupted possession of the land for 12 years and whether they are entitled to adverse possession of the same further whether they are entitled to be registered as owners of the suit land, whether their occupation and possession of the suit land constitutes an overriding interest under Sec. 3 of the Registered Land Act Cap 300 of the Laws of Kenya and finally whether damages are adequate to compensate them and finally whether a permanent injunction should issue against the Defendants to stop the said Defendants from asking the Plaintiff to demolish their houses and costs of the suit.

[2] The Plaintiffs' claim was supported by the supporting affidavit of one Tassysias Sarry Kudira who averred among other things that she has been authorised by Plaintiffs No. 2 – 20 to make and swear this affidavit. He annexed such authority to his affidavit. He stated that the suit land was registered in the name of the Defendants vide a transfer dated 20<sup>th</sup> September 1971. He stated that prior to that sale by the Defendant he and his co-plaintiffs had been on the suit land on full free and undisturbed possession. He annexed photographs of his house and some of his co-Plaintiffs. The deponent stated that he and his co-plaintiffs were squatters. That they had been so prior to the purchase of the suit land in 1971. That they had been on the land for a period of over 12 years. That their entry was without authority and/or consent and/or permission of the Defendant. That the same had been uninterrupted and/or continuous and exclusive and adverse to the Defendant the registered owner. The Plaintiffs claim that they acquired an overriding interest on the said land under Section 30(f) of the Registered Land Act and have acquired the land under Sec. 38 of the Limitations of Actions Act Cap 22 Laws of Kenya. They argued that Municipal Council of Mombasa rates of Kshs.529,305 have been outstanding and they fear the land and their houses being sold over the said rates. They annexed the rates demand for Kshs.529,305 from the Municipal Council of Mombasa. Dated 8<sup>th</sup> July 2011.

[3] The Plaintiff filed an application for directions to serve the summons by way of substituted service and the court allowed them to serve by way of substituted service by advertisement on the Daily Nation on a week day. The order was given on 28<sup>th</sup> May 2012. The advertisement was done in the Daily Nation of 16<sup>th</sup> May 2013. The case was fixed for hearing on 20<sup>th</sup> June 2013.

[4] One Tassysias Sarry Kudira gave sworn evidence on behalf of the Plaintiffs. He said that he does not know the Defendant. But he said that they had a copy of the Title Deed. The same was annexed to the Originating Summons showing the land as belonging to the Defendants. He averred that the plot is No. 1948 Mainland North and that it is 2.184 acres. That it is occupied by the 20 Plaintiffs. He produced a copy of the Search Certificate. He stated that they have been on the land since 1992 and therefore they have been on the land for over 21 years. He said he had a house on the suit premises marked as 'TSK3' annexed to the pleadings. He said that no notice has ever been given to any one of them to leave the suit premises. He stated that he has not used force to be in the premises and has been a squatter. DW2 was one Mr. Karisa Joseph Kenga who said that he lives in Utange and has a small business. He stated that he was given authority by the other Plaintiffs to sue. He further stated that he was born on the suit property in 1974. That he had been on the suit land and no one had ever asked him to leave. He said his occupation on the land had been adverse to the interests of the defendant registered owner

and he and his co-plaintiffs should be issued with title deeds to the suit land. His other fear was the accumulating Municipal Council rates. He said they were over Kshs.500,000/-. He said he was a squatter since 1992.

[5] The Defendants in this case were served. They did not enter appearance or file their defence. I consider the Plaintiff's evidence as unchallenged. I accept it. The Plaintiffs produced a copy of the title deed to show that the suit land is registered in the name of the Defendants to date. From the evidence I was satisfied that the Defendant is so registered. I am also satisfied that the Plaintiffs have been on the suit land for over 12 years. They have effected various developments therein. Their occupation has been peaceful and unauthorised by the Defendant and that they have not been given any notice so as to vacate by the Defendant. Such occupation has been adverse to the registered interests of the Defendants. The Plaintiffs should be registered as owners of the suit land aforesaid. The questions raised in the Originating Summons questions No. 1, 2, 3 are answered in the affirmative. Having answered these in the affirmative I need not make any findings on questions 4, 5 and 6. The end result is that the 20 Plaintiffs shall be registered as proprietors of land Title Number 1498 (Original No. 466/2 MN/I/CR No. 14188 in place of the Defendant. The Defendant did not contest this Originating Summons. The Plaintiffs shall bear their own costs.

**Dated and Delivered in open Court at Mombasa this 21st day of**

**February, 2014.**

**S. MUKUNYA**

**JUDGE**

**21.2.2014**

In the presence of:

Mr. Okemwa for the for the plaintiffs