



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 28 OF 2019 (O.S)

IN THE MATTER OF LAND PARCEL NO. KISUMU/NYALENDA “B”/922

AND

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF ORDER 37 RULES 7 (1) OF THE CIVIL PROCEDURE RULES

BETWEEN

ZAMALADI KAFUKO YUSUF

JAMES OKULO OUKO

SADAT ODIWUOR OUKO

PETER OBOLA OUKO

TORIKA BUKUSA OUKO

BENARD NDEGI OUKO

JARED OTIENO OUKO

FARAJI MUHAMMED OUKO

NICHOLAS OCHIENG OUKO.....PLAINTIFFS

VERSUS

JOYCE MBUYA ORUKO.....DEFENDANT

JUDGMENT

The Plaintiffs Zamaladi Kafuko Yusuf, James Okulo Ouko, Sadat Odiwuor Ouko, Peter Obola Ouko, Torika Bukusa Ouko, Benard Ndegi Ouko, Jared Otieno Ouko, Faraji Muhammed Ouko, Nicholas Ochieng Ouko have come to court against Joyce Mbuya Oruko claiming to have acquired prescriptive rights in the suit property. The Plaintiffs state that they are the children, grandchildren and wives of the children of the late Ouko Okulo who was the younger brother of the late Michael Oruko Okulo (the children of Olulo Misodhi). The suit parcel of land was the ancestral land registered in the name of Michael Oruko Okulo in trust for Ouko Okulo who was his young brother during adjudication process. The late Ouko Okulo died on 26th February 2009 leaving his children and their families, who are now the applicants herein, living on land parcel no. KISUMU/NYALENDA ‘B’/922.

The applicants have stayed on the land for a long period of more than 12 years since they were born and others married there. That upon conducting a search, the applicants have realized that the suit land parcel is registered in the name of the respondent effective the year 2014.

The applicants have had exclusive and uninterrupted use of the suit parcel of land for a long period of more than 12 years since they were born and others married there. That the applicants' use of the suit parcel of land has been open, without secrecy and without any interruption and/or resistance during the entire period. That the registration of the respondent's husband and eventually the respondent was due to a continuing trust created during the process of adjudication and/or fraudulent clandestine moves by the defendant. That the period within which the respondent could claim the suit parcel back has run out.

The Plaintiffs seek orders that they be declared to have acquired prescriptive rights over parcel of land number KISUMU/NYALENDA 'B'/922 measuring 0.39HA or thereabout by way of adverse possession.

The respondent do sign transfer and consent to transfer forms in favour of the applicants, failing which the Deputy Registrar of the High court be mandated to sign them. The costs of this suit be borne by the respondent.

In the joint supporting affidavit, the plaintiffs state that they are the children, grandchildren and wives of the children of the late Ouko Okulo who was the younger brother of the late Michael Oruko Ouko (the children of Okulo Misodhi). That the late Ouko Okulo died on 26th February 2009 leaving his children and their families, who are now the applicants herein, living on land parcel no. KISUMU/NYALENDA 'B'/922.

That they have stayed on the land for a long period of more than 12 years since they were born and others married there. That upon conducting a search, they have realized that the suit land parcel is registered in the name of the respondent effective the year 2014. That they have had exclusive and uninterrupted use of the suit parcel of land for a long period of more than 12 years since they were born and others married there. That their use of the suit parcel of land has been open, without secrecy and without any interruption and/or resistance during the entire period from the respondent.

That the registration of the respondent's husband and eventually the respondent was due to a continuing trust in favour of their patriarch, Ouko Okulo, created during the process of adjudication under the Luo Customary Law on land holding and/or fraudulent clandestine moves by the defendant. That the period within which the respondent could claim the suit parcel back has run out. That the respondent and her family members of the late Mzee Michael Oruko Okulo have their separate pieces of lands where they have built and are using exclusively. That it is in the interest of justice for the orders sought to be granted. The defendant was served but did not file a replying affidavit.

On the hearing date the plaintiffs called one James Okullo Ouko who testified on behalf of the plaintiffs. The plaintiffs state on oath that they are the children, grandchildren and wives of the children of the late Ouko Okulo who was the younger brother of the late Michael Oruko Ouko (the children of Okulo Misodhi). That the late Ouko Okulo died on 26th February 2009 leaving his children and their families, who are now the applicants herein, living on land parcel no. KISUMU/NYALENDA 'B'/922. That they have stayed on the land for a long period more than 12 years since they were born and others married there.

That upon conduction a search, they have realized that the suit land parcel is registered in the name of the respondent effective the year 2014. That they have had exclusive and uninterrupted use of the suit parcel of land for a long period of more than 12 years since they were born and others married there.

That their use of the suit parcel of land has been open, without secrecy and without any interruption and/or resistance during the entire period from the respondent.

The registration of the respondent's husband and eventually the respondent was due to a continuing trust in favour of their patriarch, Ouko Okulo, created during the process of adjudication under the Luo Customary Law on land holding and/or fraudulent clandestine moves by the defendant. That the period within which the respondent could claim the suit parcel back has run out. That the respondent and her family members of the late Mzee Michael Oruko Okulo have their separate pieces of lands where they have built and are using exclusively. That it is in the interest of justice for the orders sought to be granted.

I do find that the plaintiffs have proved their case on a balance of probabilities and I do order that:

a. The plaintiff be and are hereby declared to have acquired prescriptive rights over parcel of land number KISUMU/NYALENDA 'B'/922 measuring 0.39HA or thereabout by way of adverse possession.

b. The defendant is hereby ordered to sign transfer and consent to transfer forms in favour of the plaintiffs, failing which the Deputy Registrar of the Environment and Land Court be mandated to sign them. Costs of the suit to the plaintiffs.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22nd DAY OF MARCH, 2022

ANTONY OMBWAYO

JUDGE

This Judgment has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.