



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND CASE NO. 631 (O.S) OF 2011

IN THE MATTER OF PLOT NO. MN/1/399 - TITLE NO. CR. 7876

AND

IN THE MATTER OF: APPLICATION FOR DECLARATION THAT THE PLAINTIFFS HAVE OBTAINED OWNERSHIP OF THE ABOVE SAID PARCEL OF LAND BY WAY OF ADVERSE POSSESSION

AND

IN THE MATTER OF: SECTIONS 7,13,17,37 AND 38 OF THE LIMITATION OF ACTIONS ACT (CAP 22) LAWS OF KENYA

AND

IN THE MATTER OF ORDER 1 RULES 11,13 & 14

ORDER 37 RULES 7,8,11,13 AND 14 OF THE CIVIL PROCEDURE RULES, 2010 AND

IN THE MATTER OF SECTION 59 AND 61 OF THE REGISTRATION OF TITLES ACT

CAP. 281 LAWS OF KENYA AND ANY OTHER RELEVANT ENABLING

PROVISIONS OF THE LAWS OF KENYA

BETWEEN

- 1. HAMISI OMAR JUMA**
- 2. MWAMUYE DAU NGALA**
- 3. MWALUMBI MWANGATA & 150 OTHERS.....PLAINTIFFS/APPLICANTS**

- VERSUS -

- 1. AMRALBAI J. RAJSHI SHAH**
- 2. PEDRO JOSE CONSTANCIO CLODOMIRO.....DEFENDANTS/RESPONDENTS**

JUDGEMENT

[1] The 152 plaintiffs filed an originating summons on 8th December, 2011 under Section 7,13,17,37 and 38 of the Limitation of Actions Act Laws of Kenya Sec. 3A CPA Order 1 rule 11,13,14 and Order 37 rules 7,8,11,13 and 14 of the Civil Procedure Rules 2010 and Under Section 59 and 61 of the Registration of Titles Act Laws of Kenya for the following orders

1. That Amralbai J. Rajshi Shah & Pedro Josee Constancio Clodomro (the defendants) interest jointly and severally of Plot No. Cr. No. 7876/MN/1/3999 measuring 14.36 Acres be extinguished.

2. That this Honourable Court be pleased to order that the Applicants herein be registered as proprietors of Plot No. 7876 MN/I/399 in the place of AMRALBAI J. RAJSHI SAH and Pedro Jose Contancio Clodomiro by reason of the fact that the plaintiffs have become entitled to the said land by way of adverse possession.

3. That the Registrar of Titles Mombasa do delete entry for ownership by the defendants and issue Certificate of Title in the names of the Plaintiffs: Hamisi Omar Juma Mwamuye, Dau Ngala, Mwalumbi Mwangala holding in trust for other plaintiffs.

4. That the order referred to in paragraph 2,3, and 4 above be registered against the Title to the Plot No. 7876/MN/I/3999 in terms of Section 38(2) of the Limitation of Actions Act, Chapter 22, Laws of Kenya.

[2] They further relied on the Affidavit of Hamisi Omar Juma who alleged

1. That he is the 1st plaintiff herein and have been authorized to swear this affidavit on his behalf and on behalf of others. (Annexed and marked HJ-I is a copy of the authority to appear and act.

2. That he is familiar with the facts of this case and matters related to this case.

3. That at all material times to the suit herein, he and all other plaintiffs were and still are squatters living in the piece of land known as Plot No. MN/1/3999 Title Number CR 7876 (hereinafter called the suit property).

4. That the plaintiffs herein have been and are in physical occupation and possession of the suit land Plot Number MN/1/399. Annexed and marked HOJ- 2 are copies of the photos.

5. That the plaintiffs have occupied the suit land and no one has ever come up to claim ownership

of the same.

6. *That the plaintiffs live on the suit land with their families. They have lived in the suit land with their families. They have lived in the suit land and many were born there.*

Annexed to the originating summons was an authority to act and plead signed by 153 applicants. The authority had also the identity card numbers of the said 153 applicants. It allowed the 1st, 2nd and 3rd defendants to act on the applicants behalf. The applicants also annexed a certificate of ownership of the suit property, a map of the general area and a Certificate of Postal Search as at 22nd September, 2011 showing that the property as a freehold comprising of 14.36 Acres and registered in the names of Amrabai J. Rajshi Shah with ½ share and Pedro Joseph Constancio Clodomiro with ½ share. Annexed to the Originating Summons were 14 photographs of houses complete and incomplete and in various stages of development on the premises.

[3] The applicants applied to court on 24th May, 2012 and applied to serve the respondents through substituted service and the court (Kasango J) found the application merited and allowed the advertisement through the Daily Nation and Standard Newspapers and allowed the defendants to file their defence within 14 days of service of summons. This matter was advertised in the Standard on 22nd June, 2012 and the Nation Newspapers on 22nd June, 2012. This matter was listed for formal proof on 12th February, 2014. One Hamisi Omari Juma ID.2268020 gave evidence and told the court that he is one of the applicants. He said he was 70 years old and that he was born on the property and that he brought the case on behalf of himself and 152 others. He said his father, mother and all relatives are born on the suit property. He said he had no other land. He produced a copy of title of the respondents a search certificate and photographs of the houses he claimed belonged to some of the applicants. He finally produced a map of the area. He stated that he has never seen other owners of the property at all. Mwalube Mwangata gave a similar story. He said he lives at Utange in Plot 399. He said he was born in Kilifi but could not remember the year he went to the suit premises. He said that he has built a house there, has a wife and children. He said that he does not know the registered owners of the suit and he further said that his father and mother died and that he has buried them there. He prayed that the court do give title deeds to him and others. He stated that each person has a plot and that his plot is 50'X50'.

[4] Mwamuye Dau Ngala also gave evidence as PW4. He said they had brought the suit on behalf of others. That he is about 70 and has children and that lives on the suit property with his children. He said he occupies 1½ acres and wants a title deed.

[5] Having heard the case of the applicants, I am satisfied on a balance of probabilities that the applicants live on the suit land. That they served the defendants with the originating summons by substituted serve as ordered by the court. That there has been no appearance by the respondents. I am also satisfied on a balance of probabilities that the applicants have been on the suit properties for over 12 years and have built their homes there. That their occupation has not been interrupted by the respondent registered proprietors and the applicants herein have acquired title by adverse possession. I order therefore that the suit land plot No. MN/1/339 Title No. CR. 7876 shall be registered in the name of the

applicants herein. I further do order that the Registrar of Titles Coast Registry do register the 152 applicants as the proprietors herein as prayed in the originating summons.

It is so ordered.

Dated and delivered in open court at Mombasa this 18th day of September, 2014.

S. MUKUNYA

JUDGE

18.9.2014

In the presence of:

Ngeno advocate for the applicant.