



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELCC No. 71 OF 2018 (OS)

ASMAN OKITI NANJIRA.....PLAINTIFF

VERSUS

PAN AFRICA ALCOHOL INDUSTRIES LTDDEFENDANT

JUDGMENT

1. The plaintiff commenced proceedings herein through Originating Summons (OS) filed on 5th October 2018. He averred that he had acquired whole of that parcel of land comprised in title No. South Wanga/Lureko/872 measuring approximately 10 acres (the suit property) by way of adverse possession.

2. He therefore sought determination of the following questions:

1. WHETHER the Plaintiff and his family members have been in continuous peaceful and exclusive occupation of the land comprised in Title No. SOUTH WANGA/LUREKO/872 measuring approximately 10 acres for a period of over 12 years from 1990 against the registered proprietor to date.

2. WHETHER the title of the defendant company, its successors and or assignees over the portion of land above stated has thereby been extinguished in favour of the Plaintiff and his family members.

3. WHETHER an order should be made that the Plaintiff be registered as the proprietor of the said land parcel No. SOUTH WANGA/ LUREKO/ 872 by virtue of adverse possession.

4. WHETHER the Deputy Registrar of the court should be authorized to execute all the requisite documents for the transfer and registration of the aforesaid portion of land in the names of the plaintiff.

5. WHETHER an order of costs of this originating summons should be provide for.

3. The OS is supported by an affidavit sworn by the plaintiff. He deposed that he has been residing on and peacefully using the suit property since 1990 to date and that the suit property was originally comprised in land parcel No. South Wanga/Lureko/ 554 which it was subdivided into two portions wherein one portion was retained in the name of the plaintiff's father while the suit property was registered in the names of the defendant. He further deposed that he moved in to the suit property in 1990 and that he has been growing maize and other cereal crops therein and that the defendant company has never evicted him or questioned his stay on the land. He deposed that he has acquired the suit property through adverse possession and therefore prayed that he be registered as the proprietor.

4. At the hearing, the plaintiff adopted his aforesaid affidavit as his evidence in chief. He produced green card dated 24th November 2021. The plaintiff's case was then closed.

5. Despite evidence of service of the OS upon the defendant being availed, the defendant neither filed a response nor attended court at the hearing. There being no appearance by the defendant, its case was closed. Parties were ordered to file written submissions. Once again, the defendant did not file any.

6. The applicant filed his submissions on 21st December, 2021. He reiterated the contents of the OS and relied on **Wambugu vs Njuguna [1988] KLR 173** and **Celina Mutoni Kithinji vs Safiya Swaleh & 8 Others [2018] eKLR** and urged the court to grant the orders sought.

7. I have carefully considered the pleadings, evidence and submissions. The issues that arise for determination are whether the plaintiff has established adverse possession and whether the reliefs sought should issue.

8. The Court of Appeal restated the essentials of adverse possession in Loise Nduta Itotia v Aziza Said Hamisi [2020] eKLR as follows:

In line with the Act, Kneller, J. (as he then was) in the case of Kimani Ruchire vs Swift Rutherford & Co. Ltd. [1980] KLR 10, outlined some tenets of adverse possession thus; “The plaintiffs have to prove that they have used this land which they claim as of right. Nec vi, nec clam, nec precario (No force, no secrecy, no persuasion). So the plaintiffs must show that the company had knowledge (or the means of knowing, actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to interrupt it or by way of recurrent consideration.”

9. The plaintiff’s claim that he entered the suit property in 1990 and that he has uninterruptedly remained thereon while growing crops on it has not been challenged. From 1990 to 2018 when this suit was filed, a period of about 18 years had passed, thereby satisfying the requirement of possession for 12 years. From the copy of the green card in respect of the suit property, which was certified by the land registrar on 24th November 2021, and which the plaintiff produced, I note that the defendant became the registered proprietor of the suit property of 13th September 1977 and that it remained the registered proprietor as at the date of the hearing of this suit. The size of the property is indicated in the green card as 10 acres.

10. I am therefore persuaded that the plaintiff has established adverse possession. That being the case, the plaintiff has established his case on a balance of probabilities. In the result, I make the following orders:

a) The plaintiff has been in continuous peaceful and exclusive occupation of the land comprised in Title No. South Wanga/Lureko/872 measuring approximately 10 acres for a period of over 12 years from 1990 against the registered proprietor.

b) The defendant’s title to Title No. South Wanga/Lureko/872 has been extinguished in favour of the plaintiff by virtue of adverse possession.

c) The plaintiff be registered as the proprietor of Title No. South Wanga/Lureko/872.

d) The Deputy Registrar of this court is hereby authorized to execute all the requisite documents for the transfer and registration of Title No. South Wanga/Lureko/872 in the names of the plaintiff.

e) No order as to costs.

Dated, signed and delivered at Kakamega this 26th day of April 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Plaintiff present in person

Counsel for the plaintiff absent

No appearance for the defendant

Court Assistant: E. Juma