



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Civil Application 328 of 2010**

**1. IDDI IBRAHIM**

**2. YUSUF NEVI** suing on behalf of all the 127 members of the

Mabirikani Village Land Committee.....**PLAINTIFFS**

**VERSUS**

**1. AINSLEY LEVERATT DOPWELL**

**2. MUNICIPAL COUNCIL OF MOMBASA.....DEFENDANTS**

**JUDGMENT**

By way of an originating summons dated 16<sup>th</sup> August, 2010 and filed in court on 14<sup>th</sup> September, 2010, the plaintiffs being the 127 members of **MABIRIKANI VILLAGE LAND COMMITTEE** seek determination of the following questions:

- (1) Whether the applicants be declared to have become entitled by virtue of adverse possession of 40 years of **ALL THAT PIECE OF LAND** containing an area of 152 acres and 134 acres respectively or thereabout registered under the Registration of Titles Act (Chapter 281) Laws of Kenya in the name of **AINSLEY LEVERATT DOPWELL** and comprised in Title L.R. 3591 at **MAZERAS** Mombasa District.
- (2) Whether the plaintiffs/Applicants are entitled to be duly registered as proprietors of the suit land by virtue of adverse possession.
- (3) **THAT** costs of this application be provided for.”

The defendants named in the originating summons are Ainsley Leveratt Dopwell as the 1<sup>st</sup> Defendant/Respondent and the Municipal Council of Mombasa as the 2<sup>nd</sup> Defendant/Respondent. By a consent dated 27<sup>th</sup> July, 2011 and filed in court on 28<sup>th</sup> July, 2011 the plaintiffs and 2<sup>nd</sup> Defendant reached a consent thus the suit proceeded as against the 1<sup>st</sup> defendant only. Interlocutory judgment having been entered as against the 1<sup>st</sup> respondent on 15<sup>th</sup> July, 2011 the matter proceeded for formal proof on 16<sup>th</sup> August, 2012.

For the Plaintiffs/Applicants five witnesses testified. These were:

- i. **YUSUF NEVI PW1** - the Chairman of Mabirikani Village Land Committee.
- ii. **IDDI IBRAHIM PW2** – The Deputy Chairman of Mabirikani Village Land

Committee.

- iii. **DANIEL LWAMBI PW3** – an occupant of Mabirikani village.
- iv. **NGOMO JUMA KALUME PW4** – an occupant of Mabirikani Village.
- v. **BAKARI CHILONZO NDEGE PW 5 – AN OCCUPANT OF Mabirikani Village.**

The parcel of land in question is a 152 acre of land known as **PLOT NO. 885 [section VI and 288 section V] being Title No. 3591** located in the Mazaras area of Mombasa county. All five witnesses told the court that they have occupied the suit land for periods ranging from 26 years to 64 years with many of them having been born on the suit land. They have all constructed family homes on the suit land and many of their loved ones have been buried there. **PW1** produced in court a list of the 127 occupants of the village as well as copies of the identity cards of each applicant. In addition **PW1** produced in court a copy of a search certificate indicating that the suit land is registered to the 1<sup>st</sup> Applicant. All the witnesses testify that they have occupied the suit land uninterrupted and unhindered for close to 64 years. All attempts to serve the 1<sup>st</sup> defendant even by way of substituted service yielded no reply. Clearly a case for adverse possession has been made out. The 1<sup>st</sup> defendant has clearly condoned and/or acquiesced to the plaintiffs' occupation and use of his parcel of land for all these years.

The term '*Adverse possession*' is defined in **Halsbery's Laws of England** (Volume 87, 5<sup>th</sup> Edition] at paragraph 279 as follows:

**“.....A person is also regarded for those purposes as having been in adverse possession of an estate of land:**

- (1) Where he is the successor in title to an estate in the land, during any period of adverse possession by a predecessor in title to that estate; or**
- (2) During any period of adverse possession by another person which comes between and is continuous with periods of adverse possession of his own.”**

Case law on the question of adverse possession abounds. The general rule is that one must be shown to have had long, uninterrupted and unhindered use and possession of the parcel of land in question. This has certainly been demonstrated in this case. The applicants have lived on this land for over 64 years. No person has come forward to claim the land not even the registered owner and no attempt has been made to evict them therefrom. Their claim to the suit land by way of adverse possession has been proved satisfactorily. I therefore do hereby issue a declaration in terms of prayer (1) of this Originating Summons and I find that the Applicants are entitled therefore to be registered as proprietors to the suit land. I make no order on costs.

**Dated and delivered in Mombasa this 8<sup>th</sup> day of February, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:  
Mr. Tindi for Applicants  
Court Clerk Mutisya