



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL CASE 92 OF 2008**

**SIFWANGA OKONDA ..... PLAINTIFF**

**V E R S U S**

**ESIKOKHO NJERI ..... DEFENDANT**

**J U D G M E N T**

The plaintiff in his originating summons dated 2<sup>nd</sup> December 2008 is seeking ownership of plot No. **WEST BUNYORE/1095** by way of adverse possession. The summons are supported by his affidavit sworn on 2<sup>nd</sup> December 2008.

In his evidence, the plaintiff testified that he inherited the suit property from his late father in 1964. He does not live on the plot. His witness, Elphas Asitiva testified that it is the plaintiff who is using the plot and has used it for over 40 years having inherited it from his father. The defendant registered herself as the proprietor in 1964 and is residing on the land.

Counsel for the plaintiff filed written submissions. The submissions are at variance with the evidence adduced. In the submission it is stated that a survey was conducted and it was established that *“the plaintiff has been in occupation of the property measuring about 0.225 Hectares and whose boundaries are clearly outlined on site.”* The submissions further states that **“the said portion is approximately the Eastern half of an existing title, the perimeter of the title being physically demarcated by hedges and the exhibit marked “SO 1”** is a topographic representation of the said portion.

From the evidence adduced, it is not clear whether the plaintiff has been in occupation of the suit property. Although the supporting affidavit contend that the plaintiff has been living on the property and cultivating it for his upkeep, his oral evidence and that of the witness is to the effect that it is the defendant who lives on the property. If the oral evidence is the correct position, then the question is why has it taken the plaintiff all this time to claim his right. The plaintiff tried to cure this anomaly through the submission which claim that the plaintiff is occupying 0.275 Hectares.

The plaintiff produced a copy of the extract from the register and it shows that the plot is measuring 0.45 Hectares. The title was opened on 30<sup>th</sup> October 1964 and was registered in the defendant’s name. I had the advantage of seeing the plaintiff who is quite elderly. It is evident that by 1964 he was already an adult.

The defendant was served but failed to attend court during the hearing. She had entered appearance through the firm of Morigon Ondieki & Company Advocates. Directions were given by the court on 1<sup>st</sup> July 2011 whereby parties were to adduce viva voce evidence. The evidence adduced is not sufficient to convince me that the plaintiff has been in quiet and uninterrupted possession of the suit property since 1964. It is not clear as to which portion of the property the plaintiff is claiming as per the submissions of his counsel. The oral evidence adduced confirm that the defendant is in occupation. The alleged *“topographic representation”* was not produced as an exhibit. I do find that the plaintiff has not established his case on a balance of probabilities. Although the evidence is unchallenged, it still falls far

below the required standard of proving ownership by way of adverse possession.

In the end, I find that the plaintiff has not proved his case and the same is dismissed. There shall be no order as to costs.

**Delivered and dated at Kakamega this 25<sup>th</sup> day of April 2012**

**SAID J. CHITEMBWE.**  
**J U D G E**