



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Civil Case 186 of 2009

STEPHEN TENGA

MUTHAYO.....PLAINTIFF

VERSUS

**LUKONGO SHIHAKA alias WILSON LUKONGO
SHAKA.....DEFENDANT**

JUDGMENT

The Originating Summons dated 30.11.2009 seeks the following orders:-

- (a) An order that the respondent's rights over a portion measuring more or less 2 acres of land Title No. S/KABRAS/CHESERO/669 got extinguished by adverse possession.
- (b) An order that upon expiry of 12 years since August 1982 when the applicant was in possession of a portion measuring more or less 2 acres of land Title No. S/KABRAS/CHESERO/669 the respondent held and currently holds the same in trust for the applicant.
- (c) An order under Section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya that the applicant be registered as owner of the said portion.
- (d) An order that the respondent do execute all transfer documents in favour of the applicant to permit registration as sought in (c) above failing which the Deputy Registrar of this Honourable Court be empowered to execute any such documents on behalf of the respondent.
- (e) An order that the respondent be condemned to pay the costs of this suit.
- (f) Such further orders or relief the Honourable Court may deem fit to grant.

In his evidence before the court and the supporting affidavit sworn by the plaintiff on 30.11.2009, the plaintiff's case is that on 13.8.1982, the plaintiff bought a portion of land from the defendant from the suit land at the price of Kshs.10,200/=. A sale agreement was written. The consent of the Land Control Board was obtained.

However, it turned out that the defendant's name as reflected in his relevant identify card differed with the name on the Land Register. The defendant was required to correct his names as appearing on the identity card. In one of the documents the defendant's name appeared as WILSON SHIHAK while in the other the name appeared as LUKONGO SHIHAKA. The defendant did not effect the name change. The plaintiff took possession of the portion of land that he purchased. He has grown trees and food crops on the land and built houses there for his family and lives on the land openly without any disturbance from

the defendant.

According to the plaintiff, there exists a boundary between his parcel of land and the defendant's. The boundary features include trees and sisal plants.

The plaintiff's evidence is fully corroborated by that of PW2 CLEOPHAS SHITERO who is his brother and a witness to the sale agreement (exh.1).

Although the defendant was duly served with the Originating Summons, he did not enter appearance. The case proceeded exparte.

Bases on the evidence on record, I am satisfied that the plaintiff has been in occupation of the suit land since August, 1982 openly and peacefully with the knowledge of the defendant.

The plaintiff is entitled to the prayers sought. Consequently I enter judgment for the plaintiff as prayed.

No order as to costs.

Delivered, dated and signed at Kakamega this 31ST day of July, 2012

B. THURANIRA JADEN
J U D G E