



**IN THE MATTER OF PLOT NO. 7103/1/MN**

**AND**

**IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 OF THE LAWS OF KENYA**

**BETWEEN**

**JOSEPH KARISA PONDA ..... PLAINTIFF/APPLICANT**

**V E R S U S**

**JUKANA (K) LTD ..... DEFENDANT/RESPONDENT**

**JUDGMENT**

1. In the Originating Summons dated 2<sup>nd</sup> December 2011 the Plaintiff has asked the Court to determine the following questions-

***(a) Whether the Applicant/Plaintiff is a beneficiary by virtue of adverse possession of Plot No. 7103/1/MN and Plot No. 7104/1/MN which he is in occupation thereof.***

***(b) Whether the Applicant/Plaintiff is entitled by virtue of adverse possession to be registered as the owner of Plot No. 7103/1/MN and Plot No. 7104/1/MN.***

***(c) If the answer to (a) & (b) above is in the affirmative, a declaration do issue that Plot No. 7103/1/MN and Plot No. 7104/1/MN have passed by prescription and belong to the Plaintiff and they be registered in his name.***

2. Through an application dated 16<sup>th</sup> March 2012 the Plaintiff sought an order to effect service of the Originating Summons by way of Registered Post. Upon considering the application, the Court granted the request for substituted service but ordered that it be effected by way of advertisement in the “Daily Nation” or the “Standard” Newspapers on any working day.

3. The Summons were served by way of advertisement in the Daily Nation of Monday June 18, 2012 and an affidavit of service filed on 10<sup>th</sup> July 2012. The prescribed time lapsed without any appearance by the Defendant and so on 30<sup>th</sup> July 2012 the Plaintiff took the witness stand to prove his claim by way of viva voce evidence.

4. That evidence was brief. The Plaintiff says that he has resided on Plot Nos 7103 & 7104/1/MN since 1996 having been allowed entry by an old man who left soon thereafter and never returned. From then on no one has come forward to lay a claim on the property.

5. The Plaintiff showed to this Court pictures of a mud house which he claimed belongs to him and which stand on the plots. In the list of documents filed by the Plaintiff copies of Certificate of Title to the suit

properties and Certificates of Postal Searches carried out on 9<sup>th</sup> December 2011. These show that even on dates after the summons had been filed, the properties were registered in the name of the Defendant.

6. The Plaintiff gave further evidence that he has been paying the rates to the Council. What however was produced in Court were receipts for payments made in respect to rates clearance Certificates for the properties.

7. This Court has heard the Plaintiff and considered the exhibits produced in support of his case. That evidence is uncontraverted. This Court does believe this evidence and finds that the Plaintiff has had exclusive and uninterrupted possession of the suitland for more than 12 years and has proved his claim for adverse possession on a balance of probabilities. For this reason the Court does hereby declare that the Plaintiff is the owner of Plots No. 7103/1/MN/ and Plot No. 7104/1/MN having acquired that ownership by way of adverse possession. The two properties shall be registered in the names of the Plaintiff.

There shall be no order on costs. Orders accordingly.

*Dated and delivered at Mombasa this 30<sup>th</sup> day of August, 2012.*

**F. TUIYOTT**  
**JUDGE**

**Dated and delivered in open court in the presence of:-**

**Oduor for the Applicant**

**No appearance for the Respondent**

**Court clerk - Moriasi**

**F. TUIYOTT**  
**JUDGE**