



REPUBLIC OF KENYA

High Court at Eldoret

Civil Suit 83 of 2011

1. DAVID KIMELI TARUS

2. PHILIP KIPROP TARUS.....PLAINTIFFS

VERSUS

FRANCIS UGAME LIBYA.....DEFENDANT

JUDGMENT

The Applicants have brought this case by way of Originating Summons against the Respondent.

Their claim is that father had sold the property known as NANDI/KIMINDA/47 to the Defendant/Respondent in the 1970's and the Respondent had obtained Title and Transfer through a court order but had never taken possession of the said property.

DAVID KIMELI TARUS the 1st Applicant produced a Green Card which was marked as "PEXb 1" in support of the fact that the Certificate of Title was issued to the Defendant/Respondent on the 2nd June, 1978.

The 1st Applicant testified that he was born on the said property and was now aged 41 years of age and his brother the 2nd Applicant who now aged 42 years was also born, thereon

That he had lived on the said property and still resides thereon together with his brother (the 2nd Applicant) and his sister and his father who is now aged 83 years.

The Applicant stated that the Respondent was aware that the title had been issued and was aware that the Applicants were still in possession and the Respondent had made no attempts to evict the Applicants and their extended families from the said property.

The Applicants submitted that their occupation and possession has been continuous, open and interrupted for a period of more than twelve (12) years and were now seeking orders declaring that the Respondent's proprietary interest or claim over NANDI/KIMINDA/47 be extinguished and that the Applicants be declared as having acquired proprietary interest over the whole parcel of land by way of adverse possession.

The Applicants further prayed that the Respondents name be deleted from the Register and that the Respondent do pay costs.

The case was uncontested as the Respondent though served with the summons by way of substituted service by advertisement in the Daily Nation, the said Respondent did not respond nor file any affidavit.

The evidence of the 1st Applicant was uncontroverted. All the Applicants needed to prove on a balance of probabilities is that they have been in exclusive occupation and possession and have lived on the land continuously and without interruption for a period of over twelve (12) years.

From the evidence adduced and the submissions made the court is satisfied that time started running from the date the Certificate of Title was issued which was in 1978 and that the Applicants family has been in adverse possession of the land for a period of 33 years.

The court finds that the Applicants have established that they are entitled to claim and acquire the whole parcel of land known as NANDI/KIMINDA/47 that they have been in occupation and possession of the land for the period stated.

For the reasons stated above the court hereby enters judgment in favour of the Applicants against the Respondent and orders and declares;

- 1) That the Respondents proprietary interest in the whole parcel of land known as NANDI/KIMINDA/47 be and is hereby extinguished and name be deleted from the Register.
- 2) That Applicants be declared as having acquired ownership of NANDI/KIMINDA/47 by way of adverse possession and be registered as the proprietors thereof.
- 3) The Applicants shall bear the costs of the case.

Dated and delivered at Eldoret this 27th day of September 2012

**A.MSHILA
JUDGE**

Coram:

Before Hon. A Mshila J

CC: Andrew

Counsel for the Applicant: No appearance.

Counsel for the Respondent: Choge

Read in absence of Counsel for Applicant.

**A.MSHILA
JUDGE**