



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT KITALE.**

**CIVIL CASE NO. 122 OF 2009 (OS).**

**WILLIAM BARASA MUKUBUYI.....PLAINTIFF.**

**VERSUS**

**ADAM KIMUNGUI NDAMWE.....DEFENDANT.**

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

1. By an originating summons dated 12<sup>th</sup> November, 2009, the plaintiff sought for determination of the following issues;
  - (i) Whether the applicant has occupied the 1/8 of acre from suit land West Pokot/Siyoi/2099 for over a period of 12 years.
  - (ii) Whether the occupation of the 1/8 of an acre from suit land West Pokot/Siyoi/2099 by the applicant has been continuous, uninterrupted, notorious and exclusive.
  - (iii) Whether the applicant is entitled by adverse possession of over (12) 7ears of the suit property West Pokot/Siyoi/2099.
  - (iv) Whether this honorable court may make further orders or grant any relieve it may deem fit and just to grant.
  - (v)Who shall pay cost of this summons?

The applicant also sought for orders in the following terms:-

- (i) A declaration that the applicant is entitled to the 1/8 of an acre from suit land West Pokot/Siyoi/2099 having occupied continuously, uninterrupted and exclusive for over 12 years.
- (ii) A declaration that the respondent right to occupy or own 1/8 of an acre from suit land West Pokot/Siyoi/2099 got extinguished by adverse possession upon expiry of 12 years statutory period on 10/11/2001 or on such other date the court shall find the applicant having been peaceful, continuous and uninterrupted possession.
- (iii) Restraining order against the respondent, his agents, family or anybody claiming under his authority is perpetually barred from taking possession invading, entering and or evicting the applicant from the suit 1/8 of an acre from land West Pokot/Siyoi/2099.

(iv) An order that the respondent do pay cost of this cause.

2. The suit was served upon the respondent according to the affidavit of service filed on 8<sup>th</sup> December, 2009. The respondent did not file any response. By an application dated 2<sup>nd</sup> February, 2010, the applicant sought for directions on how this suit he filed by way of an originating summons was to be determined. On 10<sup>th</sup> November, 2010, this court directed that the originating summons be heard by way of submissions and the originating summons and supporting affidavit be deemed as the pleadings.

3. On 13<sup>th</sup> April, 2011, when the originating summons came up for hearing the applicant submitted that he has been living on a portion of land known as West Pokot/Siyoi/2099 comprising of 1/8 of an acre since 1976. The statutory period of 12 years lapsed in 2001. The applicant annexed a copy of an abstract of title showing the suit land is registered in the name of **Adam Kimungunyi Ndamwe** from 10<sup>th</sup> November, 1989. For reasons that the applicant has been in continuous occupation of the suit land, he asked the court to grant the orders.

4. This suit was not opposed; the applicant's claim is based on adverse possession on the grounds that he has been in exclusive possession of the portion suit land since 1976. The plaintiff annexed a copy of the abstract of title that shows the respondent was registered as the proprietor of the suit land in 1989. By that time, the applicant was already in possession thus the respondent was aware of the applicant's occupation. The respondent did not defend this suit. I am satisfied that the applicant proved his claim that he has been in occupation of the suit land continuously for over 12 years. The applicant is hereby granted the orders as follows:

(i) A declaration that the applicant is entitled to the 1/8 of an acre from suit land West Pokot/Siyoi/2099 having occupied continuously, uninterrupted and exclusively for over 12 years.

(ii) A declaration that the respondent right to occupy or own 1/8 of an acre from suit land West Pokot/Siyoi/2099 got extinguished by adverse possession upon expiry of 12 years statutory period on 10/11/2001 or on such other date the court shall find the applicant having been peaceful, continuous and uninterrupted possession.

(iii) A restraining order against the respondent, his agents, family or anybody claiming under his authority who are perpetually barred from taking possession invading, entering and or evicting the applicant from the suit 1/8 of an acre from land West Pokot/Siyoi/2099.

(iv) An order that the respondent do pay cost of this cause.

**Judgment read and signed on this 24<sup>th</sup> day of June, 2011.**

**MARTHA KOOME.**

**JUDGE.**