



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

CIVIL SUIT NO. 61 OF 2010 (O.S)

IN THE MATTER OF: PARCEL.NO.MN/111/2293 KILIFI (.TITLE NOL.C.R.24472)

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION THAT THE APPLICANTS
HAVE OBTAINED**

**OWNERSHIP OF ONE DECIMAL SEVEN SIX ONE (1.761) ACRES OF THE ABOVE SAID
LAND BY WAY OF ADVERSE POSSESSION**

BETWEEN

**ATHUMAN JUMA TSOLA AND 22
OTHERS.....PLAINTIFFS/APPLICANTS**

-VERSUS-

**WILFRED KIPTUM KITUR
KIMALAT.....DEFENDANT/RESPONDENT**

JUDGEMENT

The Plaintiff/Applicants who are 23 in number have moved this court under Order XXXVI Rule 3D and section 3 and 3A Civil Procedure Rules, Section 7, 37 and 38 of the Limitation of Actions Act(Cap 22) seeking that they be declared proprietor of 1.761Hectares of land on plot No.M/III/2293 Kilifi which they have acquired by adverse possession after staying and/or occupying and/or residing on the land for a period of over 12 years. They pray to be registered as owners of the plot and be issued with certificates of Title.

The property is currently registered in the name of **WILFRED KIPTUM KITUR KIMALAT** and the matter proceeded by way of Affidavit and viva voce evidence. The applicants contention is that they have

lived on the plot for close to 15 years along with their families and carried out various developments including building houses. Subsequently they have enjoyed continuous and uninterrupted stay on the land and the registered owner has never lived or set foot on that land, which means the Plaintiffs have acquired right of ownership by way of adverse possession.

The property is indeed registered in the name of Defendant as per the Title document produced as Exh 1. **JUMA KARISA NGWARE** who testified as Pw 1 is now 51 years old. He has lived on the property for 45 years alongside his co-plaintiffs who are his family members and neighbours. The Defendant has never been on that land, and Plaintiffs are perplexed as to how he obtained Title while they were in occupation. That evidence is fortified by the evidence of **KARABU KOMBE NZAI**(PW 2) who says he has been on that land since 1962 and continuously cultivated it. When he moved with his family to occupy the land in 1962, there was no one in occupation, nor did they seek permission from anyone so as to occupy the land.

The Plaintiffs evidence is uncontroverted and demonstrates a continuous and uninterrupted possession of the suit land for over 12 years. The Defendant has never set foot on that land for all the years that the Plaintiffs have been in occupation and I am satisfied that they have acquired title by virtue of adverse possession. Their prayers are thus granted and I grant the following orders;-

1. The Plaintiffs are entitled to be declared as properties of plot No.M/III/2293 KILIFI measuring 1.761 Hectres by way of adverse possession.
2. The Registrar of Lands do register the Plaintiff as joint owners of plot M/III/2293 Kilifi and Certificates of Title be issued.
3. No orders on costs.

Delivered and dated this 22nd day of June 2011 at Malindi

**H A OMONDI
JUDGE**

No appearance of parties, Judgement read in open court and file returned to registry.

**H A OMONDI
JUDGE**