



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CIVIL SUIT NO.154 OF 2001

**IN THE MATTER OF THE REGISTERED LAND ACT CHAPTER 300 OF THE LAWS OF
KENYA TOUCHING ON LAND PARCEL NO.BUNGOMA/KIBISI/17**

AND

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CHAPTER 22 SECTIONS 7 AND
37 OF THE LAWS OF KENYA**

BETWEEN

ALLAN

**MULANDA.....PLAINTIFF/
APPLICANT**

~VRS~

MASAI

**WAMUKOTA.....DEFENDANT/
RESPONDENT**

JUDGMENT

The Plaintiff Allan Mulanda sues the Defendant Masai Wamukota by way of originating summons claiming title of land BUNGOMA/KIBISI/17 through adverse possession. The Defendant could not be traced for personal service. The Plaintiff served through substituted service under Order V Rule 17 of the former Civil Procedure Rules. The Defendant did not file a defence to the suit. The Plaintiff testified that the Defendant was the allottee of land reference no.BUNGOMA/KIBISI/17 by Ministry of Lands. The parties entered into a written agreement where the Defendant sold the land to the Plaintiff for Ksh.7600/=. The purchase price was paid and the Plaintiff took occupation of the land. The Defendant was not traced to execute transfer in the name of the Plaintiff. The Plaintiff then filed this case claiming a remedy under section 38 of the Limitations of Actions Act. It was the Plaintiff's case that he has since developed the land extensively. He has built two permanent houses on the land, planted trees which are now mature and ready for timber splitting. He grows subsistence crops on the land including maize and bananas. The Plaintiff claims that he has lived in quiet, continuous and undisturbed possession for twenty

eight years.

The evidence of the Plaintiff was that when he purchased the land, the Defendant handed over to him the original letter of allotment from Ministry of Lands and settlement which together with the sale agreement was produced in evidence. This is proof of how the Plaintiff entered and occupied the suit premises. The Plaintiff's case is uncontroverted that he has stayed in quiet, uninterrupted and continuous possession of the suit premises since 1973. The statutory period of twelve years expired in 1985. The Plaintiff has been cultivating and living on the land having dispossessed the former owner of it. He has done acts which are inconsistent with the former owner's enjoyment of the soil. Extensive developments have been carried out over the years. It was held in the case of **NDATHO VRS ITUMO & 2 OTHERS** Court of Appeal Nairobi Civil application 231 of 1999.

“To defeat a title by dispossessing the former owner, acts must be done which are consistent with his enjoyment of the soil for the purpose of which he intended to use it.”

The issue of uninterrupted and continuous possession has been established on part of the Plaintiff.

The land in question is not registered in the name of the Defendant. The Defendant was an allottee of Ministry of Lands. The Plaintiff can only assume the same status of an allottee. I note that the Plaintiff did not enjoin the Ministry in this case for reasons better known to him. He testified that he paid the loan due with the Ministry amounting to Ksh.20,000/=. The receipt is in his possession and it is in the name of the Defendant since he was the allottee in the Ministry's records.

I am satisfied that the Plaintiff has proved his case on the balance of probabilities. I enter judgment in his favour against the Defendant. In effect the Plaintiff becomes the allottee of the land through adverse possession and to follow up issue of title deed through the Ministry of Lands. The Defendant to meet the costs of the suit.

F. N. MUCHEMI

JUDGE

Judgment dated and delivered on the 8th day of June, 2011 in the presence of Plaintiff.

F. N. MUCHEMI

JUDGE