



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 71 OF 2011 (OS)**

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION**

**AND**

**IN THE MATTER FOR PLOT NO. 368/I/MN**

**BETWEEN**

**GEORGE KITSAO**

**CHENGO.....PLAINTIFF**

**VERSUS**

**POULTRYCARE**

**LIMITED.....DEFENDANT**

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

1. By an originating summons dated 25<sup>th</sup> March, 2011 George Kitsao Chengo (hereinafter referred to as the plaintiff) who claims to be entitled to ownership of plot No. 368/I/MN by virtue of adverse possession, sought determination of the following questions:

- a) Is the defendant the registered proprietor of plot No. 368/I/MN.

- b) Has the plaintiff been in possession since 1985 of the property known as plot No. 368/I/MN.
  - c) If so has the said possession been quiet, continuous and adverse to the title of the defendant.
  - d) If so, should the plaintiff be registered as the absolute proprietor of the property known as plot No. 368/I/MN free from all other encumbrances.
  - e) What orders as to costs.
2. Poultrycare Limited who was the defendant to the suit was served with the originating summons. The defendant neither entered appearance nor filed any reply to the originating summons. Consequently, interlocutory judgment was entered in favour of the plaintiff and directions given for the hearing of the suit to proceed by way of formal proof.
3. In proof of the case, the plaintiff testified that he moved into plot No. 368/I/MN (hereinafter referred to as the suit property) in the year 1985 with his parents. The suit property was a forest and was not occupied by any person. The plaintiff and his family have lived on the suit property for over 20 years and they have also been farming the land. The plaintiff's father died in the year 2008, but the rest of the family continued to live on the land. The plaintiff produced a copy of a certificate of postal search which showed that the suit property was registered in the name of the defendant. He also produced a photocopy of a certificate of title which he obtained from lands office which also showed that the suit property was transferred to the defendant by a transfer dated 18<sup>th</sup> April, 1978 which was registered on 10<sup>th</sup> May, 1978.
4. Efforts by the plaintiff to trace the office or directors of the defendant were unsuccessful as the registered office of the defendant was given as the suit property, whilst records from the Register of Companies indicated that the defendant company which was registered in 1977 had only filed returns upto 1987.
5. The plaintiff further made inquiries and established from the Municipal Council that the rates in respect to the suit property has not been paid for a long time. Currently there is a sum of Kshs. 875,940/= due and owing. The plaintiff therefore prayed for judgment in his favour.
6. Having considered the evidence adduced, I find that the defendant is the registered proprietor of plot No. 368/I/MN, and that plaintiff has been in possession of the suit property since 1985. The plaintiff's occupation has been open, continuous and uninterrupted for a period of over 12 years. Therefore the plaintiff has acquired the suit property by way of adverse possession. The plaintiff may be registered as the proprietor of the suit property. However, plaintiff's registration will have to be subject to the existing encumbrance registered against the title.
7. In the circumstances of this case, I do not find it appropriate to make any orders for costs.

These shall be the orders of the court.

**Dated and delivered this 28<sup>th</sup> day of July, 2011.**

**H. M. OKWENGU**

**JUDGE**

In the presence of:-

Mabeya for the plaintiff

No appearance for the defendant

Buoro Court Clerk