



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (LAW COURTS)

CIVIL SUIT 66 OF 2005

BETWEEN

SYLVANUS BWOSI SONGORE.....APPLICANT/PLAINTIFF

AND

CHRISTOPHER MUKHANJI LITALI.....RESPONDENT/DEFENDANT

J U D G E M E N T

The Plaintiff, by an Originating Summons dated 21.7.2005 and filed in court on the 25.7.2005, sought and claimed as against the Defendant, that the court do enter judgement in his favour acquiring title to 3 acres of land parcel No. Isukha/Lubao/2037, by virtue of adverse possession. The parcel was part of the division of L.R. No.Isukha/Lubao/365.

The plaintiff's affidavit showed that in the year 1982 he purchased 3 acres as aforesaid, from one Samson Shikongo Mmanyisi. Samson had been assigned the portion by customary inheritance by his father, Elijah Mmanyisi, deceased, in whose ownership, the land was originally registered. When later one Liyayi Mmanyisi, a brother to Samson Mmanyisi, became appointed the Legal Representative of the deceased's estate, he failed to recognize the sale of the 3 acres to the Plaintiff but went ahead to sell and transfer the 3 acres then registered as L.R. No. Isukha/Lubao/365, to a third party, i.e Christopher Mukhanji Litali. That was in February 1988.

In 1994 the said Christopher Mukhanji Litali filed a suit, Kakamega PMCC No.17 of 1994 seeking an eviction of the Plaintiff herein from L.R. No. Isukha/Lubao/365 which had earlier been registered in his name. He succeeded, with the court ordering the plaintiff to quit from the land within 30 days of the Orders of court. The plaintiff appealed but the appeal was later dismissed.

The records show that from the time the Plaintiff entered and took possession of the land in 1982 to 1988 when the land was transferred and registered in the Defendant's name, it was about six years, and the time the said Sylvanus Bwosi Songore filed his suit against the plaintiff in 1994 was about five to six years. It was not 12 years. It is also clear that from the date of judgement which evicted him from the land until he filed this suit on 25.7.2005, was a period less than 12 years.

In seeking a judgement in his favour, that the land L.R No. Isukha/Lubao/2037 be registered in his name due to his adverse possession, the plaintiff argued that he had held the land in adverse possession from 1982 to 2005 when he filed this suit, a period of over 20 years. He said that during the said period, the possession was entirely adverse. He said the possession was first against Liyayi Mmanyisi who was the legal representative of the father's original land before transfer was made thereafter to the Defendant, Christopher Mukhanji Litali. He accordingly argued that the adverse possession on the said piece of land was continuous for the whole period of 20 years in which he was in possession.

In response to the plaintiff's submissions, the Defendant said that the plaintiff's claim cannot hold. He said that there was no adverse possession with the plaintiff at any stage which lasted 12 or more years. The first period of 1982 to 1988 was when the registered interest was still in the name of their deceased father. That in 1988, the interest in the relevant land was transferred into the name of the Defendant who later, in 1994, filed an eviction suit, thus interfering with the adverse possession, if any existed in favour of the plaintiff, before achievement of 12 years. The defendant also stated that if from the filing of the case fresh adverse possession began to run in favour of the plaintiff, the required of 12 years had not been exhausted by the time the plaintiff filed this suit on 25.7.2005. He said that as against the Defendant, only about 10-11 years had expired.

For the above reasons the Defendant submitted that the plaintiff was not at any relevant time entitled to the said piece of land through adverse possession as provided or by virtue of the provisions of Section 38 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya.

I have carefully considered the submissions of both sides. I am of the view and do find that the Plaintiff did not at any relevant time hold the land in adverse possession for the prescribed period of 12 years. This in my view, applies to the first period when the land was registered in the name of the deceased, Elijah Mbakaya Mmanyisi. Later in August 1986 Liyayi Mmanyisi became the legal representative of the estate of Elijah Mmanyisi and transferred the land in favour of the Defendant, Christopher Mukhanji in 1988. The period of adverse possession, if any before the suit for eviction in 1994 could only be 6 to 7 years. The Plaintiff appears to have had no adverse possession in either period, for the prescribed of 12 years.

I observe that although the issue of the prescription period was raised by the defendant in his written submission, the plaintiff who should have faced it and answered it chose to be silent.

In the above circumstances and taking into account the conclusions I have herein come to, I hold that the plaintiff is clearly not entitled to be registered as the beneficial owner of the parcel of land L.R. No. Isukha/Lubao/365 or any subdivision arising from it by virtue of adverse possession. This suit therefore has no merit and is dismissed with costs to the Defendant. Orders accordingly.

Dated and delivered at Bungoma this 10th day of October 2011.

D.A. ONYANCHA
JUDGE.