



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 97 OF 2010 (OS)

IN THE MATTER OF: PARCEL NO. 216 SEC. II MAINLAND NORTH (TITLE NO. C.R. 1082

AND

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION – THAT THE APPLICANTS
HAVE OBTAINED OWNERSHIP OF THIRTEEN POINT SEVEN (13.7) ACRES OF THE
ABOVE SAID LAND BY WAY OF ADVERSE POSSESSION**

BETWEEN

**COSMUS SAFARI CHULA AND 134 OTHERS.....PLAINTIFFS/
APPLICANTS**

VERSUS

**1. BRYAN DANIEL MC CLEARY
2. MICHAEL GEORGE MC CLEARY.....DEFENDANTS/
RESPONDENTS**

JUDGEMENT

The Plaintiff herein **COSMAS SAFARI CHULA** and 134 others filed this present suit by way of Originating Summons filed in court on 7th April 2010 seeking to be declared proprietors by way of adverse possession of the 13.7 acres of land on Plot No. 216 Sec. II MN, (hereinafter referred to as the '**suit property**'), having occupied and resided on the suit property for a period of 12 years. The Plaintiffs further seek to be registered as owners of the suit property. The named Defendants were with the leave of the court, served by way of an advertisement in the Daily Newspaper of 8th May 2010. They failed to enter appearance or file any defence. The matter was therefore set down for formal proof.

PW1 COSMAS SAFARI CHULA who testified on behalf of the other 134 Plaintiffs told the court that they have all occupied the suit property for the past 15 years. There has been no interference with their said occupation by any person. No person has filed suit against them for trespass and no attempt has been made to evict them from the land. The Title for the suit property was exhibited in court **Pexb1**. It indicates that the land was registered to **Bryan Daniel Mc cleary** and **Michael George** (the defendants herein) as tenants in common on 26th March 1959. The land is registered under the Land Titles Act. Therefore S. 37 of the Limitation of Actions Act Cap 22 Laws of Kenya is applicable. S. 38(1) of Cap 22 provides as follows –

“38(1) Where a person claims to have been entitled by adverse possession to land registered under any of the Acts cited in S. 37 of land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

That is exactly what the Plaintiffs in this case are seeking to do.

Evidence has been adduced to prove that no rate payments were being made in respect of the suit property. By a notice placed in the Daily newspapers the Mombasa Municipal Council claimed rate arrears in the amount of Kshs.234,410/- **Pexb2**. The Plaintiffs pooled their resources together and cleared the outstanding rates by way of instalments as evidenced by the Statement of Account **Pexb5** and copies of receipts for payments **Pexb3**. Annexed to the Supporting Affidavit sworn by **PW1** on 6th April 2010 are photographs of the suit property. These clearly show that the Plaintiffs have built residential homes on the land which they and their families occupy. Schools and other amenities have also been put up. I am satisfied that the Plaintiffs have proved their case upon a balance of probability. I therefore make orders as follows:-

- (1) The Plaintiffs are entitled to be declared as proprietors of Plot No. 216 Sec II MN by way of adverse possession.**
- (2) The Registrar of Lands do register the Plaintiffs as joint owners of Plot No. 216 Sec II MN and Certificates of Title be issued.**
- (3) No order as to costs**

Dated and Delivered in Mombasathis 29th day of November 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-
Mr. Mwakireti for Plaintiffs

M. ODERO

JUDGE

29/11/2010