



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.353 OF 2009 (O.S)

1. JOHN MUCHEMI NDUNG’U }
 2. PETER NGULU KIMULI }

3. KORI KAMUYU } AS CHAIRMAN, VICE CHAIRMAN
 AND SECRETARY REPRESENTATIVELY MAILI OF SABA MWENGENYE SELF HELP GROUP
PLAINTIFFS.

- **VERSUS** -

RANBIR s/o
DEFENDANT

UPSANA KENT (sued as the Administrator of the Estate of Ranbir s/o
 KEHARCHAND KENT.....)

JUDGMENT

The plaintiffs brought this suit against the defendant by way of Originating Summons under Order XXXVI Rule 3D of the Civil Procedure Rules and Section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya posing the following questions for determination by the court;

- a) **Whether Maili Saba Mwengenyne Self Help Group is duly registered as a Self Help Group with the Ministry of Culture and Social Services?**
- b) **Whether the members of the said group have been in continuous occupation of the parcel of land known as LR.No.11531/9 in the City of Nairobi measuring 16.73 acres since May 1997 a period of more than 12 years?**
- c) **Whether the members of the said group have become entitled to ownership of the said land by way of adverse possession?**
- d) **Whether the said land should be registered in favour of the members of the group in place of the respondent?**
- e) **Who should bear the costs of this summons?**

If the answers to the above questions are in the positive then, they seek orders that they be declared owners of LR.No.11531/9 by adverse possession and the said property be registered in their favour in place of the defendant. The Originating Summons is supported by an affidavit sworn by one Peter Ngulu

Kimuli who is said to be the Vice-Chairman of the plaintiffs.

The Originating Summons was served upon the defendant who however did not enter any appearance or file any affidavit in reply. Upon directions being taken that the hearing be by way of affidavit evidence and that counsel files submissions in respect of the summons, the judgment date herein was set.

I have related the affidavit on record to the submissions filed by the learned counsel for the plaintiffs. Section 38(1) of the Limitation of Actions Act reads as follows;

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

The procedure therefore is set out under Order XXXVI Rule 3D of the Civil Procedure Rules aforesaid. The plaintiffs have provided evidence that they were registered by the Ministry of Culture and Social Services and a certificate dated 20th August, 1996 has been annexed to the affidavit of Mr. Peter Ngulu Kimuli. They have also annexed the copy of the title.

The affidavit of Mr. Peter Ngulu Kimuli has set out the background of the occupation of the said parcel of land by the plaintiffs from the month of May 1997. They have also provided evidence by annexing a copy of the grant of probate in favour of the defendant for the estate of the registered owner. In the absence of any rejoinder by the defendant, the plaintiffs have proved their case to warrant the orders sought in the Originating Summons.

In the end, I find that they are entitled to the ownership of the suit property by way of adverse possession and therefore they should be registered as proprietors thereof. There shall be no orders as to costs. Orders accordingly.

Dated, signed and delivered at Nairobi this 18th day of November, 2010.

A. MBOGHOLI MSAGHA
JUDGE