



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Suit 48 of 2004 (OS)

LELEI A. TUEI alias JOSEPH LELEI KEMEI 1ST PLAINTIFF

TIROP A. KEMEI2ND PLAINTIFF

VERSUS

**KIIPSUGE A. LELEI alias SUK A. LILE
.....DEFENDANT**

JUDGMENT

I: Background

1. The Respondent Kipsuge A. Lelei alias Suk A. Lile is the brother to the 1st and 2nd applicant. The family originally lived with their father elsewhere. Unfortunately their father passed away. Their uncle took their mother and the three of them under his care. He divided to them portion of land parcel Kericho/Ainamoi/699 sometime in 1957.
2. In 1964 they continued to reside on the piece of land. There was a quarrel between their mother and the Respondent. She went away with one of them to stay in Kipkelion but returned. Unknown to her the Respondent had registered the land in his name.
3. Since the 1970's the parties have been in and out of tribunal cases before the elders and other forum. In the year 2004 they filed an Originating Summons seeking this courts orders to hold that they had acquired title by adverse possession. The Respondent deny the land is family land nor that he holds the land in trust for the other two brothers. He stated that he is the first proprietor. That the dispute was on the encroachment by the brother onto his land. He denied that occupation has been since 1976.
4. Maraga J ordered that this part heard case began by Musinga J be heard from where it left off. I have now taken over the conduct of this case and did hereby continued the hearing under order 17 r 10 Civil Procedure Rules.
5. I have perused the proceedings before me. Each case has its own special circumstances.
6. From the evidence of PW2 a cousin of the parties it was he who had originally been on the land but his father asked he moves. He was there in 1951, the aunt Grace Taprandich's husband passed away in 1956. His father brought her and her sons to reside on the land he was asked to move elsewhere.

7. In 1966 the respondent registered the land in his name being Kericho/Ainamoi/699. He and the plaintiffs allege that the said land should be divided amongst them.
8. The respondent states the land has always been his and refuses to pull out or give out the portion.

III: Findings

9. A claim for adverse possession requires that there be 12 years of uninterrupted stay. The parties all reside on the suit land. The plaintiffs have shown that since 1976 they have been on the suit land uninterrupted for the said period.
10. I have noted that the respondent holds the land in trust of the plaintiffs. I accordingly hold that the said land be and is hereby determined to be held in trust for the applicant.
11. I order that the land be accordingly subdivided. I award the costs of this application to the applicants.

DATED this 25th day of March, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocate

D.O. Akinyi advocate instructed by M/S Akinyi & co. advocates

for the Plaintiff – present

E.M. Orina advocate instructed by M/S E.M. Orina & Co. advocates

for the Defendants – present