



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Case 197 of 2006

IN THE MATTER OF: LR NO. 5004: KWALE/DIANI BEACH PLOT

NOS. 283 & 284 & MSA. M.S./DIANI BEACH

BLOCK 102, 103, 104 & 993

**IN THE MATTER OF: APPLICATION FOR DECLARATION THAT THE
APPLICANTS/PLAINTIFFS HAVE OBTAINED
OWNERSHIP OF THE ABOVE SAID PARCEL OF
LAND BY WAY OF ADVERSE POSSESSION**

BETWEEN

- 1. MOHAMED MAMBO**
- 2. JUMA KIMBIRWA**
- 3. SULEIMAN MWAWALI**
- 4. JUMA BUGU.....PLAINTIFFS**

A N D

- 1. RICHARD LIVINGSTONE HAWKINS**
- 2. JOHN EDWARD LESLIE**

3. ORBIT DEVELOPERS LIMITED

4. BHUPINDER SINGH KNOWLE

5. GURBUX SINGH NAGI.....DEFENDANTS

JUDGEMENT

This matter was brought to court by way of an Originating Summons by which the four Plaintiffs namely Mohamed Mambo, Juma Kimbirwa, Suleiman Mwawali and Juma Bugu seek a declaration from the court that the four have obtained ownership of the suit property by way of adverse possession. The suit property is described in the Originating Summons as LR No. 5004: Kwale/Diani Beach Plot Nos. 283 and 284 and Mombasa/M.S./Diani Beach Block 102, 103, 104 and 993. Initially the Plaintiffs named five Defendants in their Plaint. However by a consent entered into by the parties before Hon. Justice Sergon on 26/6/2009 the Plaintiffs withdrew their suit against the 1st and 5th Defendants respectively. With the authority of the court by way of an order dated 8th June 2007 the Plaintiffs served the Originating Summons on the Defendants by way of substituted service. Only the 1st and 5th Defendants responded to the advert placed in the Daily Press on 28th April 2009. The 2nd, 3rd and 4th Defendants neither entered appearance nor did any of them file a defence to the suit. As such the hearing proceeded in their absence by way of viva voce evidence on 30th June 2009.

PW1 Mohamed Mambo who is the 1st Plaintiff told the court that he has resided in Plot No. 102 uninterrupted and without hindrance for the past 20 years. **PW2** Juma Saidi Bugu who is the 4th Plaintiff told the court that he has resided uninterrupted and without hindrance on Plot No. 103 for the past 25 years. **PW3** Juma Mohamed Keke told the court that he has resided on Plot No. 104 for the past 40 years uninterrupted. Lastly **PW4** Juma Saidi Kimbirwa told the court that he has been in uninterrupted and unfettered possession of Plot No. 993 for the past 18 years. **PW5** Mohamed Jembe the District Land Registrar Kwale gave evidence as **PW5**. He told the court that he is aware of the four plots in question. He produces as exhibits certified copies of the Green Cards for each plot indicating each plots ownership. **Pexb1** to **Pexb4**. **PW5** told this court that plot Nos. 102 and 103 are both registered to Orbit Developers Limited, Plot No. 104 is registered to one Michael Lewis whilst Plot No. 993 is registered to Sterling Investments Limited.

Despite the four plots being registered to the parties named above the four Plaintiffs have told this court that they have enjoyed uninterrupted and unfettered possession of said plots for periods ranging between 18 to 40 years. The four Plaintiffs have now come to court seeking title to the said plots by way of adverse possession. Blacks Law Dictionary 8th Edition page 59 defines the doctrine of “**Adverse Possession**” thus:-

“2. The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time”.

In this case all the four Plaintiffs have lived on the respective plots for a period of over twelve years. Their testimony with regards to this fact is uncontroverted. No steps have been taken by the registered owners of the said plots to evict the Plaintiffs neither have any of the Defendants even visited the land. The Plaintiffs’ occupation of the land has been open, uninterrupted and is clearly adverse to the titles of the Defendants. As a court I am satisfied that the 1st to 4th Plaintiffs have acquired title to the plots each

occupies by way of adverse possession. As such I do grant the prayers sought in the Amended Originating Summons dated 13th October 2008. I do hereby declare the Plaintiffs proprietors of the suit property and order that they be registered as follows:-

- **1st Plaintiff** - **Plot No. 102**
- **2nd Plaintiff** - **Plot No. 993**
- **3rd Plaintiff** - **Plot No. 104**
- **4th Plaintiff** - **Plot No. 103**

This court makes no order as to costs.

Dated and delivered at Mombasa this 28th day of September 2009.

M. ODERO

JUDGE

Read in open court

No appearance by either party

M. ODERO

JUDGE

28/9/2009