



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT 74 OF 2003

1. PETER OPUDO NYAKUNDI)

**2. WILFRIDA ANYANGO NYAKUNDI)
 PLAINTIFFS**

VERSUS

**THE CHAIRMAN OF SCHOOL COMMITTEE OF ACHOL SCHOOL
 DEFENDANT**

JUDGMENT

By a plaint filed on 12th May, 2003, the plaintiffs alleged that they were the registered proprietors of parcels of land known as **KANYAMWA/KOCHIENG'-KOMUNGU KAETA/902 and 904**, hereinafter referred to as "**the suit properties**". The suit properties were initially owned by the plaintiffs' late father, Nicholas Nyakundi, who gave ex gratia a portion of the suit properties for construction of a school. The portion that was given away is now registered as **KANYAMWA/KOCHIENG – KOMUNGU – KAKAETA/903** in the name of South Nyanza County Council on which Ochol Primary School is erected.

The Plaintiff' averred that in February 1980 the Committee of the aforesaid school unlawfully extended the school boundary into land parcel No.902 and thereby annexed the said portion to the school. Pursuant to the provisions of **Section 21(2) of the Registered Land Act**, on 10th February, 2000, the plaintiff made an application to the District Land Registrar to solve the boundary dispute. The District Land Registrar established that there was some merit in the plaintiff's claim but noted that the claim was time barred as the existing boundaries had been accepted as correct for more than twelve years. Consequently, the District Land Registrar did not order rectification of the boundary.

The plaintiffs prayed for judgment as hereunder:

(a) An order to compel the District Land Registrar, Homa Bay to rectify the boundary between land Parcel Nos.902 and 903.

(b) An order of eviction of any of defendant's property

From land parcel No. KANYAMWA/K. K. KAKAETA/902 and an order of injunction to restrain the defendant from ever returning thereon.

- (c) **General damages for trespass**
- (d) **Costs of this suit.**
- (e) **Interest on (c) and (d) at court rates.**

The defendant filed a statement of defence through the Attorney-General's office and denied the plaintiff's claim.

The defendant further denied that the land on which the school is erected ever belonged to the late Nicholas Nyakundi as alleged by the plaintiff. It added that the land had been preserved as a public utility land since 1973.

The first plaintiff testified and produced a Title Deed in respect of parcel No.904 as an exhibit. He also produced an index map showing the disputed property. The defendant did not attend court and neither did any representative from the Attorney-General's office although the hearing date had been fixed by consent.

I have carefully considered the plaintiff's claim. Much as I agree that the defendant seems to have encroached into the plaintiffs' parcel of land No.902, it is clear that the plaintiff's claim is time barred. **Section 7 of the Limitation of Actions Act** states as follows:

"7. An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

In view of the above provisions, the defendant, having been in occupation of the plaintiffs' parcel of land since 1980 and the plaintiffs having failed to institute recovery proceedings until the year 2003, they are now time barred. I dismiss the plaintiffs' suit with no order as to costs.

DATED, SIGNED and DELIVERED at KISII this 14th day of April 2008.

D. MUSINGA

JUDGE.

In the presence of:

Mr. Moracha HB for Mr. Okoth for plaintiffs.

N/A for the Defendants'

D. MUSINGA

JUDGE