

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

ELC Case 92 of 2007 (OS)

CHARLES NDUNGU WANYOIKE.....APPLICANT/PLAINTIFF

BETWEEN

ASHE KHALOON W/O MOHAMED SADIQ.....RESPONDENT/DEFENDANT

JUDGMENT

The plaintiff brought this suit by way of originating summons under Section 38 Limitations of Actions Act Cap 22, Section 3A of the Civil Procedure Act Cap 21 and Order XXXVI Rule 3 (a) of the Civil Procedure Rules seeking a declaration of entitlement by adverse possession of land parcel number L.R. 209/3775 now registered in the name of the defendant Ashe Khaloon w/o Mohamed Sadiq. He also seeks an order that he be registered as the sole proprietor of the suit land in place of Ashe Khaloon w/o Mohamed Sadiq.

The plaintiff's case is that he had purchased the suit land in the year 1976 at a public auction conducted by M/s C.B. Mistri Auctioneers and he paid a sum of Sh. 95,000/= and took possession of the suit land in 1976.

In his evidence he told the court that since he took possession in 1976 he has been in continuous, exclusive and without interruption ever since. To defeat a title by disposing the former owner, acts must be done which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it and the possession must be continuous and not suspended for a period of over 12 years. And time can only run against a known owner who has failed to assert his right against the adverse possessor.

As was stated by the Court of Appeal in **KIMANI RUCHINE V. SWIFT ROTHER FORD LTD [1980] KLR 10 at p. 16**. A plaintiff in adverse possession claim has to prove:

- (1) Continuous use of land for 12 years and over without secrecy, force or evasion.
- (2) Knowledge of the owner of the occupation and
- (3) Continuous possession without any break or interruption for 12 years.

This is based on the principle that rights of action do not live for ever and should die off when unclaimed. It is in the public interest that a person who has stayed undisturbed for long in land should be protected.

The plaintiff has proved that he has lived on the suit land and used it for over 12 years continuous and without interruption and therefore he has acquired title by adverse possession and I so declare and order that he be registered as sole proprietor of land parcel LR No 209/3775 in place of Ashe Khaloon w/o Mohamed Sadiq.

Delivered and dated at Nairobi this 17th day of October 2008.

J. L. A. OSIEMO

JUDGE