



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT 260 OF 2006 (O.S)

1. RUNYA MUNGA RUNYA

2. MUNGA RUNYA MUNGA

3. SWALEH M. HOROMWE

4. KAZUNGU RUNYA MUNGA

5. JUMA RUNYA MUNGA

6. SAFARI RUNYA MUNGA

7. CHARO RUNYA MUNGA PLAINTIFFS

- Versus -

KARIBUNI HOLDINGS DEFENDANT

Coram: Before Hon. Justice L. Njagi

Mr. Sifuna for Plaintiffs

Court clerk – Ibrahim

J U D G M E N T

The plaintiffs herein, RUNYA MUNGA RUNYA, MUNGA RUNYA MUNGA, SWALEH MAHFUDH HOROMWE, KAZUNGU RUNYA MUNGA, JUMA RUNYA MUNGA, SAFARI RUNYA MUNGA and CHARO RUNYA MUNGA, brought this action by way of an Originating Summons dated 18th November, 2006, under Order XXXVI rule 3D of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, and Section 38 of the Limitation of Actions Act. They claim to be, jointly and severally, the owners of land parcel No. 259/III/MN Kanamai – Kilifi, having acquired title to the same by adverse possession. They have accordingly referred this matter to the court for the determination of the following questions –

1. Whether the plaintiffs jointly and severally are entitled to all that parcel of land occupied by the

plaintiffs and described as No. 259/III/MN Kanamai – Kilifi, by virtue of adverse possession.

2. Whether the defendant's title or right plot No. 259/III/MN Kanamai – Kilifi is extinguished and its claim of the same time barred by virtue of section 17 of the Limitation of Acts Act.
3. Who should bear the costs of this suit.

The plaintiffs' claim is supported by the annexed affidavit of RUNYA MUNGA RUNYA, the first plaintiff herein. In that affidavit, the first plaintiff deposes that the other six plaintiffs are all his own children. His testimony is that he was once an employee of one Major Syden Amstrong who was the first registered owner of the plot known as 259/Sec.III/MN (the suit land). When the said Major Amstrong left the country in 1959, he left the plot to the first plaintiff who has occupied it ever since. However, unknown to him, some other persons caused the suit plot to be registered in their name and have kept transferring the same from one person to another. The defendant herein is the current holder of the title, but its whereabouts is unknown to the plaintiffs as it has never appeared on the suit land, nor has it carried out any development thereon.

It is also the first plaintiff's contention that he has sired all his children on the suit land and all of them are now adults. He has also buried some of those children and grandchildren on the said piece of land. He has also developed the suit land wherein he practices mixed farming, and has not only planted coconut trees, but also built both semi and permanent houses thereon. In short, he has resided on the said land peacefully and without interruption for a period of more than fifty years and all his children have resided thereon for a period of more than twenty years. For these reasons, the plaintiffs claim that they have acquired title to the suit land by adverse possession.

The defendant is the registered proprietor of the suit land. Having failed to trace the defendant, the plaintiffs were allowed to serve by substituted service by sending the relevant documents by prepaid registered post to the last known postal address of the defendant. This was duly done on 13th February, 2007. The defendants having failed to enter appearance, an interlocutory judgment was entered against them and the matter came before this court for formal proof.

At the oral hearing, the 1st plaintiff gave evidence as P.W.1 and the 5th plaintiff testified as P.W.2. In his sworn evidence, P.W.1 said that he had lived on the suit land for about 45 years and that all his 16 children were born on that land. He could not remember the year when he settled thereon, but he has coconut trees, a house, and all his children have built on that piece of land. During the entire period that he has lived there, nobody has come to claim the land or to evict the plaintiffs. He therefore asked the court to allocate the land to them.

This evidence was supported by that of P.W.2, Juma Runya Munga, who is also the 5th defendant. He told the court that he was 33 years old and that he was born on the suit land; that all the brothers have built on the land; and that some of the houses are semi permanent. He did not know where the defendants live, and nobody has ever gone to claim that property. He thereupon urged the court to give the plaintiffs the title as they have lived on the suit land for more than 45 years.

On the basis of that evidence, Mr. Sifuna for the plaintiffs submitted that the plaintiffs had proved their claim on a balance of probability. They had lived on the suit land for more than 45 years without interruption, and were therefore entitled to the land under the Limitation of Actions Act.

I have considered the plaintiffs' evidence and the submissions of their counsel. That evidence is uncontroverted and I have no cause to doubt it. The first plaintiff has lived on the suit land for more than 45 years. The fifth plaintiff, who is 33 years old, is his father's youngest son and he has lived on the suit land since his birth. This establishes that all the plaintiffs have lived on the suit land for much more than 12 years, and their residence and possession has been uninterrupted for all that period. I am therefore satisfied that the defendant's title or right to the suit land are extinguished and that the plaintiffs have acquired the same by adverse possession.

The plaintiffs shall cause the suit land, i.e. Plot No. 259/Sec.III/MN to be surveyed and registered in their names as tenants in common in equal shares.

It is so ordered.

Dated and delivered at Mombasa this 31st day of May, 2007.

L. NJAGI

JUDGE