



REPUBLIC OF KENYA



**Anyango v Amuom & another (Environment & Land Case 14 of 2021)
[2022] KEELC 14912 (KLR) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14912 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 14 OF 2021
GMA ONGONDO, J
NOVEMBER 21, 2022**

BETWEEN

CAREN AKINYI ANYANGO PLAINTIFF

AND

ONYANGO AMUOM 1ST DEFENDANT

SARAH W/O ONYANGO 2ND DEFENDANT

JUDGMENT

1. On March 19, 2021, the plaintiff, Caren Akinyi AnyangO through the firm of Nyakwamba and Company Advocates mounted the present suit by way of an originating summons dated March 16, 2021 under, *inter alia*, section 38 of the [Limitation of Actions Act](#) Chapter 22 Laws of Kenya seeking the orders infra;
 - a. That the honorable court be pleased to declare that the Applicant has acquired LR No East/Karachuonyo/Kobala/2776. (The suit land herein) adversely and she is therefore entitled to be registered as the absolute owner.
 - b. That the honorable court be pleased to subsequently order the District Land Registrar Kosele to rectify land register with respect to the suit land and to have the Plaintiff duly registered as the owner over the said land parcel number.
 - c. That the Respondents herein be ordered to execute all documents of transfer in respect of the suit land in favour of the Applicant failure to which the Deputy Registrar of this Honourable court be empowered to execute the same on behalf of the said respondent.
 - d. That the Respondents, their agents, servants or workers be restrained permanently by an order of injunction from interfering in any manner whatsoever with the suit land.



- e. The costs of this application be provided for and made payable by the Respondents to the Applicant.
2. The originating summons is anchored on the plaintiff's supporting affidavit of 13 paragraphs of even date, a certificate of official search dated March 17, 2020 indicated as a green card in error and annexed thereto (PExhibit 1) alongside grounds (a) to(e) stated on the face of the same. Briefly, the plaintiff's complaint is that in the year 1987, she entered the suit land in the presence of the defendants who are its registered proprietors. That she has been in occupation and possession of the suit land quietly, peacefully and uninterruptedly since that time hence provoking this suit.
 3. The defendants, Onyango Amuom And Sarah W/o Onyango through the firm of Julius Juma and Company Advocates filed a notice of appointment of Advocates dated April 19, 2021 on April 21, 2001. However, they failed to file any response to the originating summons.
 4. Moreover, the defendants were served with a hearing notice dated October 17, 2022 as discerned in an affidavit of service filed in court on even date. Be that as it may, the defendants and their counsel failed to attend the hearing of the suit which proceeded by way of formal proof pursuant to the orders and directions of this court given on June 20, 2022.
 5. On October 18, 2022, the plaintiff (PW1) testified and relied on his affidavit sworn on even date in support of the originating summons and his statement dated October 14, 2022 as part of his testimony. Further, he testified in part ;

“I rely, too, on a copy certificate of official search dated August 17, 2020.... (PExhibit 1).
 6. PW2 was Walter Agira Omollo aged 77 years old. He relied on his statement dated October 14, 2022 as part of his evidence. The statement reads, inter alia;

“.....I know that the applicant has been in occupation of LR No East/Karachuonyo/Kobala/2776 since 1987. I neighbor that land. She entered the suit property together with my husband. The proprietors of the said land namely Onyango Amuom and Sarah were present when they entered the land.....”
 7. In the submissions dated October 25, 2022 and filed herein on November 14, 2022, learned counsel for the plaintiff referred to the orders sought in the originating summons, set out the background of the case in brief and framed an issue for determination namely whether the plaintiff has proved title of the suit land by adverse possession. Consequently, he analyzed the issue in the affirmative. That there is no dispute that the suit land is registered in the name of the plaintiff.
 8. To reinforce the submissions, counsel relied upon sections 13, 16, 17 and 38 of the *Limitation of Actions Act* Chapter 22 of the Laws of Kenya and the case of *Kasuve v Mwaani Investments Ltd and 4 others* (2004) 1 KLR 184 on proof of adverse possession. Thus, counsel contended that the plaintiff has met the requirements to warrant the court grant the orders sought in the originating summons.
 9. Plainly, there was neither evidence nor submissions on the part of the defendants in this matter.
 10. In the foregone, it is the duty of this court to determine whether the plaintiff has established adverse possession over the suit land against the defendants as held in a long range of authorities including *Wilson Kazungu Katana and 101 others v Salim Abdallah Bakshwein and another* (2015) eKLR and *Godfrey Shimonya and 3 others v Mary Anyango Ameka and another* (2018) eKLR on a balance of probabilities. Also, whether the plaintiff is entitled to the orders sought in the originating summons?



11. Concerning the issue of registration of the suit land, PW1 deposed at paragraph 7 of her supporting affidavit that the suit land is registered in the name of the defendants. Further, her counsel stated at page 2 of the submissions that;

“It is not in dispute that the suit land is registered in the name of the respondents.”
12. Indeed, the suit land is registered in the name of the defendants with effect from December 14, 2003. Clearly, title deed was issued to them on January 12, 2015 as revealed in part B-proprietorship section of Exhibit 1.
13. On open, peaceful, continuous and exclusive possession of the suit land for the prescribed period of time, has the plaintiff proved the same? I bear in mind the decisions in *Katana*, *Kasuve* and *Shimonya* cases (*supra*).
14. The answer to the question at paragraph 13 above, is in the affirmative. PW1 was emphatic at paragraphs 4 and 8 of her supporting affidavit that his entry into the suit land and possession of the same has been peaceful, quiet and un-interrupted for over 30 years.
15. Regarding the issue of dispossession of the owner or discontinuation of possession of the suit land, I take into account paragraphs 5 and 7 of the plaintiff's supporting affidavit. Furthermore, being guided by the *Halsbury's Laws of England* 3rd Edition Volume 24 paragraphs 481 and 484 at pages 251 and 152, that there can be no dispossession if enjoyment and use are possible, PW1 has established that since the defendants are not in enjoyment and use of the suit land, they have been dispossessed thereby.
16. Sections 25 (1) (b) and 28 of the *Land Registration Act, 2012* as well as section 7 of the *Land Act, 2012* provide for overriding interests. Adverse possession is inclusive thereunder.
17. It is trite that the burden of proof in civil cases is on the plaintiff always to prove his or her case on a balance of probabilities. That the burden is not lessened even if the matter is heard by way of formal proof such as in the instant suit; see *Kirugi and another v Kabiya and 3 others* (1987) KLR 347.
18. To that end, it is the finding of this court that the evidence of PW1 was well presented, substantiated, unchallenged and cogent. So, the plaintiff has proved the elements of adverse possession against the defendants to the requisite standard as held in *Salim v Boyd* (1971) EA 550 and *Kasuve* case (*supra*).
19. In the result, judgment be and is hereby entered for the plaintiff against the defendants in terms of orders 1,2,3 4 and 5 sought on the originating summons and as set out at paragraph 1(a) (b), (c), (d) and (e) herein above respectively.
20. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 21TH DAY OF NOVEMBER 2022.

G.M.A ONG'ONDO

JUDGE

Present

1. Mr. Nyakwemba, learned counsel for the plaintiff.

2. Okello, Court assistant

G. M. A ONG'ONDO

JUDGE

