

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

AT BUNGOMA

Civil Suit 94 pf 2004

JARED OKOTH.....APPLICANTS

VERSUS

SALIM WAFULA.....RESPONDENTS

JUDGMENT

By an originating summons, under Order XXXVI Rules 5, 7, 37 and 38 of the Civil Procedure Rules, the applicants Jared Okumu (hereinafter referred to as 1st applicant) and Jared Okoth (hereinafter referred to as 2nd applicant) sought orders of adverse possession. They urged that land parcel No.E.BUKUSU/S.KANDUYI/389 measuring 0.075 Ha. be registered in their joint names in place of Salim Wafula (hereinafter referred to as the Respondent).

PW1, Jared Okumu Okoth, testified that on 2nd January 1969 he bought jointly with Jared Okoth Plot No.E.Bukusu/S.Kanduyi/389 measuring 0.075 hectares from one Salim Wafula, the Respondent.

That they jointly proceeded to develop the same. They constructed residential houses thereon. Since 1969, the land and the premises thereon have been under their joint occupation.

Between 1969-1970, the Respondent reportedly went to Uganda and has not returned since then thereby frustrating the transfer of the said plot to themselves.

PW2, Jared Okoth supported the testimony of PW1 (Jared Okumu) in material particulars. His testimony was that they purchased the subject plot in 1969 and have occupied and developed the same for a period in excess of 12 years and hence acquired title by way of adverse possession. The subject plot therefore ought to be registered in the applicants' joint names.

The applicants sought and obtained leave of the Court to serve the Respondent by way of substituted service on 9th November 2004. The applicants thereafter applied for and obtained judgment on 16th May 2005 in terms of the provisions of Order IXA rules 2 and 3 of the civil Procedure Rules.

Subsequently, the applicants fixed the suit for formal proof before me on 6th February 2006. The Respondent failed to attend the formal proof.

I have heard the testimony of the applicants. In the absence of evidence to controvert the same, I accept the same. Accordingly, I give judgment for the applicants as prayed for in the originating summons dated 3rd August 2004.

I order that the Land Registrar do register the parcel of land NO.E.BUKUSU/S.KANDUYI/389 measuring 0.075 hectares in the joint names of the applicants in place of Salim Wafula. There shall be no order as to costs.

Dated and delivered at Bungoma this 13th day of February 2006.

N.R.O. OMBIJA

JUDGE