

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

Civil Case 851 of 2006

NICHOLAS KOPO KAZUNGU.....PLAINTIFF

VERSUS

NAWAZ MOHAMED MIRDOR.....DEFENDANT

RULING

The plaintiff brought this suit by way of Originating Summons for a declaration that he has secured proprietorship of the suit property being L.R. NO. KILIFI/MUTWAPA/206 by adverse possession claiming that he entered and took possession of the suit land in 1982 and has lived there openly, peacefully and without any interruption for a period over 12 years.

The claim is supported by an affidavit sworn by the plaintiff in which he avers that the suit property is registered in the name of NAWAZ MOHAMED MIRDOR who left the jurisdiction of this Honourable Court 20 years ago and his whereabouts is not known.

Efforts to serve the defendant were fruitless hence this application for leave to effect service by way of Substituted Service. Before I go into the merits and demerits of the application to effect service by way of Substituted Service, I note that the suit property is in Kilifi District within the local jurisdiction of Malindi High Court. Section 12 of the Civil Procedure Act requires that a suit shall be instituted where the subject matter is situate.

It provides as follows:-

“12” Subject to pecuniary or other limitations prescribed by any law suits –

(a) for the recovery of immovable property

(b) for the partition of immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate”.

In the circumstances I decline to grant the prayers sought in the Chamber Summons dated 22nd August 2006 and invoke my inherent powers under Section 3A of the Civil Procedure Act and order that this suit be withdrawn from this court and be transferred to Malindi High Court which is the court within the local limits of whose jurisdiction the property is situate.

Those are the orders of this court.

Dated and delivered at Nairobi this 30th day of November 2006.

J.L.A. OSIEMO

JUDGE