

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 151of 2003

JEFWA NYALE KITHI PLAINTIFF

- Versus -

SUGRABAI MULLA MOHAMEDALI DEFENDANT

R U L I N G

This is an Originating Summons brought under Section 38 of the Law of Limitation of Actions Act, Chapter 22 of the Laws of Kenya, Order 36 Rule 3D of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Applicant, Jefwa Nyale Kithi, seeks an order of this court to be registered as the owner of **ALL THAT** parcel of land known as Subdivision No. 121 Section III M.N. (C.R. No. 4322) in place of the defendant, SUGRABAI MULLA MOHAMEDALI for reasons that he has become entitled to the ownership of the said land by Adverse Possession.

In the supporting affidavit the Applicant has deposed that sometimes in 1974 he saw the said piece of land which was very bushy and unoccupied. He moved and settled thereon and has since then remained in exclusive, continuous and uninterrupted occupation of the same. He further states that he has built thereon a home where he lives with his family and has generally developed the piece of land.

After sometime, the Applicant further states, he carried out a search of the title at the Lands Office and found out that the land is registered in the name of one Sugrabai Mulla Mohamedali whom and whose whereabouts he does not know. In the circumstances he depones that he has acquired title to the land by adverse possession and seeks to be registered as the owner of it.

Not knowing the whereabouts of the defendant the plaintiff/Applicant sought and obtained this courts leave to serve the application by advertisement in the newspaper. He did that on the 1st October 2003 but the defendant has not entered appearance or filed any pleadings in opposition to the application.

Having considered the application as a whole and the submissions made by counsel for the plaintiff/Applicant, I am satisfied that the plaintiff/Applicant has been in exclusive, continuous and uninterrupted occupation of the said piece of land for a period of over 12 years and has therefore acquired title to it by adverse possession. Consequently I order that the plaintiff/Applicant, JEFWA NYALE KITHI, be registered as the owner of **ALL THAT** piece of land situate in Coast Province of the Republic of Kenya and known as Subdivision No. 121 Section III M.N. and registered in the Land Titles Registry at Mombasa as Number C.R. 4322/1 in place of the defendant, SUGRABAI MULLA MOHAMEDALI.

DATED and delivered this 6th day of December 2004.

D.K. Maraga

Ag. JUDGE