



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT KISUMU

ELC NO. 61 OF 2019 (O.S)

IN THE MATTER OF THE REGISTERED ACT, CAP 300

(NOW REPEALED)& LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF LIMITATION OF ACTION ACT CAP 2 OF THE LAWS OF KENYA

AND

IN THE MATTER OF LAND PARCEL NO. KISUMU/KARATENG/1265

CHARLES ODUOR RAWO.....APPLICANT

VERSUS

MARION OMOLLO SESOA.....RESPONDENT

JUDGEMENT

Charles Oduor Rawo (hereinafter referred to as the Plaintiff) has sued Marion Omollo Sesoa (hereinafter referred to as the Defendant) claiming that he has acquired Parcel number Kisumu/Karateng/1265 being the suit property by virtue of adverse possession and prays to be declared the absolute owner and that the Respondent be ordered to execute all documents of subdivision and transfer in respect of land parcel NO. KISUMU/KARATENG/1265 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 Respondent enabling the Land Registrar- Kisumu County to register the suit land parcel so demonstrated in the names of the applicant.

That the Respondent, her agents, servants and or any other person claiming through her be ordered to give vacant possession of the demonstrated the suit land parcel.

That upon prayer 1 and 2 being granted, the honourable court be pleased to issue an order of permanent injunction directed at the Respondent, her agents, servants and or any other person claiming through her be restrained from interfering with the suit land parcel and peaceful occupation of the parcel by the Applicant.

That any entries in the register be reverted back to the ARIWA GROUP for proper management. The Originating Summons is premised on grounds that:-

- a) The Applicant was born and brought up in the said parcel of land.**
- b) The parcel was erroneously annexed as an estate of the late Winstone Omollo ARIWA by the Respondent.**
- c) The parcel of land was not part of the deceased estate and the actions of the Respondent were illegal.**
- d) The suit land parcel belonged to Ariwa Group.**
- e) The Applicant has come to this Honourable Court with clean hands and without any delays.**

f) It is in the interested of justice that the orders sought herein be granted.

In the replying affidavit Marion Omollo Sesoa states that the parcel of land was initially owned by Ariwa Group that was owned by Omollo Marion Sesoa, Michal Sing Opiyo, Jackline Akoth Odeny, James Obonga Kabech and Odhiambo Omollo (deceased). The parcel of land was later transferred to her name by agreement of the Ariwa Group members. This was after a succession cause. The property was transmitted to her after a successful succession cause. She claims that the plaintiff does not stay on the land and is not a member of Ariwa Group.

When the matter came up for hearing, the plaintiff testified that he has sued the defendant, his cousin's wife because she took out title for Ariwa group.

According to the Plaintiff, Ariwa was not included in the group. People hired the land and yet they were not members of the group. He prays that the court cancels the title and revert the land back to Ariwa Group.

On cross-examination by the defendant, he states that he stopped utilising the land when she took title to the land.

PW2, Tobias Opot, 57 years old, a teacher by profession states that he knew the plaintiff since childhood. They grew up on the same parcel of land. Many people were staying on the suit parcel of land. The Defendant is the wife of William Omollo Ariwa, the person in charge of the land. In a nutshell PW2 states that the land belonged to Ariwa Group.

On cross-examination by the defendant, he states that he succession cause was a fraudulent exercise as the land belonged to the group but not Ariwa.

The Defendant on her part testified that the land belonged to her husband. When he died he left her the papers and left her the number. She produced the chief's letter and the certificate of official search. She produced the title deed and the certificate of confirmation of grant.

On cross-examination by Mr. Mirembe, she states that the Chief's letter showed that the land belonged to Ariwa Group. She did not know the plaintiff but saw him in Kisumu. She does not stay on the land. James Obuya Kabach stays on the land.

DW2, Michael Sigu states that he is a partner who lives at Karateng between Chulaimbo and Maseno. He claims to own the suit property. The Defendant is sister in law. When the defendant's husband died they tried to formalise ownership of the suit property. The land belonged to their family and not the plaintiff's group.

On cross examination by Mr. Mirembe, he states that he was born in 1934 and that by 1984 he was 30 years old. Members of Ariwa Group were his parents. His father was a beneficiary. The land was registered in the name of their group. He states that there are 5 people staying on the land namely himself, Obunga, Mzee Omondi, Opiyo, James Omondi and Kabech Obuya.

DW3, James Obunga a doctor by profession states that he is a member of Ariwa group the owner of land parcel of land. That Charles Oduor Reno is not a member of Ariwa group hence has no right to the property.

On cross-examination, he states that he was born in 1967 and has stayed on the land for several years. His parents stayed on the land. The Plaintiff does not stay on the land.

I have considered the evidence on record and submissions on record and do find that the plaintiff has failed to discharge his burden of proof that he has been in possession of the suit land for a period of 12 years and/or more.

The statement by Tobias N. Opot dated 11/12/2019 tells it all that the plaintiff is not in possession as according to Tobias N. Opot, the land is being utilised by other people but not the plaintiff. He is even asking for eviction in the prayers and submissions.

When I discern the green card in respect of West Kisumu/Karateng/1265 measuring approximately 4.4Ha, I do find that register was opened on 20/4/1977 and the land registered in the names of the Ariwa group. There is no cogent explanation as to how the land became registered in the defendant's husband name for her to cause the same to be transmitted to her name after succession. Infact there is no explanation as to how the Ariwa group transferred the land to her husband. There is a big lacuna that suggest a lot of monkey business on the parcel of land in dispute.

However, the plaintiff having chosen to come to court to be declared to be in adverse possession has to prove that he has been in occupation of the parcel of land for at least 12 years. No such evidence is available.

The law on adverse possession is expressed in Section 7 of the Land Action act Cap 22 Laws of Kenya which provides:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

In conclusion, I do find that the plaintiff has not proved his case and the same is dismissed with costs.

DATED AT KISUMU THIS 30TH DAY OF APRIL, 2021

ANTONY OMBWAYO

JUDGE

This Judgement has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE