



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 58 OF 2018 (O.S)

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

**IN THE MATTER OF ACQUISITION OF TITLE BY ADVERSE POSSESSION OF DIFINED PORTION ON LAND PARCEL
NORTH UGENYA/NDENGA/271 BY RAPHAEL ODHIAMBO MBUYA**

BETWEEN

RAPHAEL ODHIAMBO MBUYA.....APPLICANT

VERSUS

CHARLES OOKO MWARO.....1ST RESPONDENT

OCHIENG MWARO.....2ND RESPONDENT

OKOTH OLOO.....3RD RESPONDENT

JUDGEMENT

Raphael Odhiambo Mbuya,(hereinafter referred to as the plaintiff) has come to this court by way of Originating Summons against Charles Ooko Mwaro, Ochieng Mwaro, Okoth Oloo hereinafter referred to as the Defendants claiming to be in possession and has acquired by way of adverse possession and rights over 1.4 Ha of the land know as North Ugenya/Ndenga/271 measuring 2.2 Ha currently registered in the names of Patris Mwaro Okol deceased for determination of the following questions:-

- 1. Whether the Applicant has been in open, quiet and notorious possession of 1.4Ha out of North Ugenya/Ndenga/271 for a period exceeding 12 years required in law for acquisition of land by adverse possession.**
- 2. Whether the Respondents entitlement and title to a portion measuring 1.4 Ha out of LR. North Ugenya/Ndenga/271 has become extinguished upon expiry of 12 years from time the Applicant has been in possession since he reached age of majority in the year 2006 having been born in the year 1988 on the said portion of land.**
- 3. Whether the Applicant has acquired the title of the said portion of land measuring (1.4Ha) out of 2.2Ha from L.R. North Ugenya/Ndenga/271 by virtue of adverse possession and whether such title shall be issued for the portion he possesses.**
- 4. Whether the Applicant is entitled to title of portion measuring 1.4Ha out of North Ugenya/Ndenga/271 (2.2 Ha) by virtue of adverse possession since he occupied the same for a period running 12 years and if the Applicant is entitled to 1.4Ha out of the said land parcel as a dependant/survivor/Administrator of the estate of MBUYA ODUOL (deceased).**
- 5. Who should pay the cost of this application.**

He prays for orders that:

- a) The respondents' rights over 1.4Ha out of North Ugenya/Ndenga/271 (2.2Ha) as possessed by the Applicant is extinguished by adverse possession from the time applicant acquired same.**
- b) The applicant do and is hereby granted right of Title to the 1.4Ha of the portion from North Ugenya/Ndenga/271 (2.2Ha).**

c) An order of injunction be issued against 1st, 2nd and 3rd Respondents, permanently restraining them either by themselves, their relatives, servants, workers, agents or any other person claiming through them from interfering with the defined part of land parcel L. R. North Ugenya/Ndenga/271 measuring 1.4Ha which the applicant is claiming.

d) The respondents be ordered to give back possession of any part of defined portion of L. R. North Ugenya/Ndenga/271 measuring 1.4Ha which they may be currently occupying back to applicant.

e) This honourable court do give further orders it may deem just and expedient.

f) Costs be borne by respondents.

In the supporting affidavit, the plaintiff states that he is the son of Mbuya Oduol deceased and holds a grant of letters of administration ad litem all of the estate of the said deceased person. He states that his father was born on the land in the year 1911 and was buried on the land at the age of 89 years. Before adjudication, his father was in possession. He invited one Patris Mwaro Okol who acquired part of the parcel of land.

During adjudication the said Patris Mwaro Okol registered himself as proprietor of parcel of land measuring 2.2 Ha. However, his father remained in possession of his portion of land measuring 1.4Ha and this is the portion the plaintiff is occupying to date.

Upon death of the plaintiff's father, Patris Mwaro Okol began claiming the parcel of land. The said Patris Mwaro Okol died and upon his death his survivors are now threatening the plaintiff with eviction.

The plaintiff's family has occupied the portion for 89 years. He prays for the orders sought in the Originating Summons. The Defendants were served but chose not to file any response. Consequently, judgment was entered for the plaintiff pending formal proof.

When the matter came up for hearing, PW1, Raphael Odhiambo Mbuya reiterated the supporting affidavit and produced the grant of letters of administration ad litem dated 26/10/2018 to demonstrate capacity.

He produced the green card and certificate of official search to demonstrate that the parcel of land was registered in the defendants' name.

PW2, Oganga Amoya a farmer adopted his statement whose import is that the land belonged to his late father. PW3 Charles Okoth stated under oath that the plaintiff is son of Mbuya Oduol who was buried on the suit parcel of land. The Plaintiff has lived on the land since he was born.

I have considered the evidence on record, the submissions by the Plaintiff and do find no serious challenge to the evidence produced by the plaintiff.

I do find that the plaintiff has demonstrated that he has been in occupation of 1.4 Ha of the suit property for more than 12 years which occupation has been exclusive and non-permissive and do grant orders that the respondents' rights over 1.4Ha out of North Ugenya/Ndenga/271 (2.2Ha) as possessed by the Applicant is extinguished by adverse possession from the time applicant acquired same. The applicant is hereby granted right of Title to the 1.4Ha of the portion from North Ugenya/Ndenga/271 (2.2Ha).

An order of injunction is hereby issued against 1st, 2nd and 3rd Respondents, permanently restraining them either by themselves, their relatives, servants, workers, agents or any other person claiming through them from interfering with the defined part of land parcel L. R. North Ugenya/Ndenga/271 measuring 1.4Ha which the applicant is claiming. Costs of the suit to be borne by respondents.

DATED AT KISUMU THIS 22nd 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