



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 115 OF 2017(O.S)

RAMA HASSAN MANGALE.....APPLICANT

VERSUS

SEYYEDA FEHMEEDAH BEGUM.....RESPONDENT

JUDGMENT

1. By an Originating Summons dated 2nd May 2017 as filed herein on 17th May 2017, Rama Hassan Mangale (the Applicant) prays for orders:-

1.

2. That the Respondent's interest in the property known as Mgumo Patsa/Mazeras/522 situated in Mazeras Kilifi County measuring approximately 1.27 Ha be and is hereby extinguished;

3. That the Land Registrar Kilifi do delete the entry in favour of the Respondent on the Green Card/Register in consideration of paragraph two above and/or register the appropriate discharge in respect thereof without gazetment(sic);

4. That the Applicant be registered as the proprietor of the parcel of land known as Mgumo Patsa/Mazeras/522 situated in Mazera/Kilifi County measuring approximately 1.27 Ha in place of Seyyed Fahmeedah Begun by reason and fact the Applicant has become entitled to the said land by adverse possession;

5. That the Land Registrar Kilifi without gazetment do proceed and issue a Title Document for the parcel of land known as Mgumo Patsa/Mazeras/522 measuring approximately 1.27 Ha in the names of the Applicant;

6. That the orders above herein be registered against the Title known as Mgumo Patsa/Mazeras/522 measuring approximately 1.27 Ha at the Kilifi Lands Registry in terms of Section 38(2) of the Limitation of Actions Act and all other relevant laws;

7. That the costs of the Originating Summons be provided for.

2. On the 11th October 2017 following an application by the Applicant, this Court allowed the Originating Summons to be served upon Seyyed Fahmeedah Begum (the Respondent) through an advertisement in a newspaper. Subsequently, the Applicant placed an advertisement in the Peoples Daily of 21st November 2017. The said advertisement required the Respondent to enter appearance within 14 days of the Publication.

3. As it were, the Respondent neither entered appearance nor filed a response to the Summons. This matter subsequently proceeded ex-parte in the absence of the Respondents.

4. In his testimony before the Court, the Applicant testified that he has lived on the suit land with his family for more than twenty years. In the course of that time some of their family members died and were buried on the land. The family uses the land for farming and they have built their residential houses on the land.

5. The Applicant further told the Court that during the period of their stay they have never met or seen the Respondent and that no one had ever tried to interrupt their possession and occupation of the land. He therefore urged the Court to declare that he had become entitled to the land under the doctrine of adverse possession.

6. As was stated in *Wambugu vs Njuguna (1983) KLR 173*, before an order of adverse possession can be granted, it must be demonstrated that the registered and/or known owner of the parcel of land in question has lost his right to the land either by being dispossessed or by his possession being discontinued. In that regard, the Applicant must prove that he has taken over the occupation and possession of the land in a manner adverse to the interest and rights of the known owner thereof.

7. In his affidavit filed in support of the Summons, the Applicant has exhibited photos of a number of structures temporary and permanent which he has built on the suit property. There is also a picture of a cemented grave said to be on the suitland. A perusal of the photographs gives the impression that indeed the Applicant has been on the suitland for a considerable period of time.

8. In the absence of any evidence and or testimony on the contrary, I am prepared to accept the Applicant's testimony that he has had exclusive and uninterrupted possession of the suit property for a period exceeding twelve years.

9. In the circumstances, I am satisfied that the Applicant has proved his case to the required standard. Judgment is accordingly entered in favour of the Applicant as prayed in paragraph 2 to 6 of the Originating Summons.

10. I will make no order as to costs.

Dated, signed and delivered at Malindi this 11th day of July, 2019

J.O. OLOLA

JUDGE