REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 54 OF 2019 (O.S)

IN THE MATTER OF LAND PARCEL NO. KISUMU/PANDPIERI/671

AND

IN THE MATTER OF ORDER 37 RULES 7 (1) OF THE CIVIL PROCEDURE RULES

BETWEEN

CALEB OTIENO NYAMITAH.....APPLICANT

VERSUS

ZABLON OKOTH ANGIENDA.....RESPONDENT

JUDGEMENT

Caleb Otieno Nyamitah (hereinafter referred to as the Plaintiff) has come to court by way of originating summon against Zablon Okoth Angienda asserting that:

> **a) That all that parcel of land known as land parcel no. KISUMU/PANDPIERI/671 is currently registered in the name of ZABLON OKOTH ANGIENDA as per copy of the green card.**
>
> **b) That the applicant entered into the said land and remained into the said land without the consent, permission and or let by the registered owners and or proprietors of the same and has been in actual, physical and outright occupation and possession of the same to the exclusion of the registered owners and or proprietors of the same.**
>
> **c) That the occupation and possession has been peaceful, uninterrupted and for a period more than 12 years for all the applicant.**
>
> **d) That the said occupation has been open, overt, clear, noticeable and hostile to the rights of the interest of the registered proprietors, current and past by virtue of the fact that the applicant have established permanent structures which they have been occupying along with their families and cultivated and rented out part of the structures to tenants year in year out.**
>
> **e) That the occupation and possession relates to 0.04Ha of land parcel no. KISUMU/PANDPIERI/671 and the same continues to date.**

The Plaintiff prays for orders:

> **a) A declaration that the respondents right to recover 0.04Ha of the parcel of land known as KISUMU/PANDPIERI is extinguished under the Limitations of Actions Act Cap 22 Laws of Kenya and the title thereto be extinguished on the grounds that the applicant have openly, peacefully and continuously been in occupation and possession of the aforesaid portion of land for exceeding 12 years.**
>
> **b) An order directing the LAND REGISTRAR KISUMU COUNTY to enter names of the applicant in the parcel register subject to adverse possession as tenants in common in equal shares.**
>
> **c) Costs of the originating summons be determined.**

In the supporting affidavit the plaintiff states that him and his family entered the said land in 1993. That they have developed the said land within family while doing business in part of the land while tilling part of it at the same time.

The applicant entered into the said land and remained into the said land without the consent, permission and or let by the registered owners and or proprietors of the same and has been in actual, physical and outright occupation and possession of the same to the exclusion of the registered owners and or proprietors of the same.

The occupation and possession has been peaceful, uninterrupted and for a period more than 12 years for all the applicant. The said occupation has been open, overt, clear, noticeable and hostile to the rights of the interest of the registered proprietors, current and past by virtue of the fact that the applicant has established permanent structures which they have been occupying along with their families and cultivated and rented out part of the structures to tenants year in year out.

The occupation and possession relates to 0.04Ha of land parcel no. KISUMU/PANDPIERI/671 and the same continues to date.

He prays for a declaration that the respondents right to recover of land known as KISUMU/PANDPIERI/671 is extinguished under the Limitations of Actions Act Cap 22 Laws of Kenya and the title thereto be extinguished on the grounds that the applicant have openly, peacefully and continuously been in occupation and possession of the aforesaid portion of land for exceeding 12 years. The Defendant neither entered appearance nor filed a replying affidavit despite being served.

Section 7 of the Limitation Action Act, Cap 22 of Laws of Kenya provides that:

> **"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"**

I do find that the plaintiff has proved his case on a balance of probabilities and I do grant the following orders: -

> **a) A declaration that the respondents right to recover 0.04Ha of the parcel of land known as KISUMU/PANDPIERI is extinguished under the Limitations of Actions Act Cap 22 Laws of Kenya and the title thereto be extinguished on the grounds that the applicant have openly, peacefully and continuously been in occupation and possession of the aforesaid portion of land for exceeding 12 years.**
>
> **b) An order directing the LAND REGISTRAR KISUMU COUNTY to enter names of the applicant in the parcel register as the absolute proprietor of the suitland.**

Costs of the Originating Summons to the Plaintiff.

DATED AT KISUMU THIS 13th DAY OF MAY, 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