



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MOMBASA

ELC NO. 61 OF 2018 (O.S)

KAULI BEJA NGALA

ELIJAH BEJA NGALA

SALOME MEDZA CHIRIMA.....APPLICANTS

VERSUS

ALICE WAITHERA MWANGI.....RESPONDENT

JUDGMENT

(Suit seeking title to suit land by way of adverse possession; suit uncontested; evidence showing that the applicants have been in continuous, quiet, uninterrupted possession of the suit land for a period in excess of 12 years; judgment entered for the applicants)

1. This suit was commenced on 15 March 2018 by way of an Originating Summons taken out pursuant to the provisions inter alia of Sections 7, 13, 17, 37 and 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya. The applicants principally wish to have orders that they have acquired title to the land parcel Kwale/Mwangunda/57 by way of adverse possession. That title is registered in the name of the respondent. The court did give leave to the applicants to serve the summons by way of advertisement in a local daily newspaper as it was averred that the respondent could not be traced and an advertisement was duly placed in the Standard newspaper of 15 September 2018. No appearance was entered by the respondent.

2. The matter proceeded for hearing by way of viva voce evidence. PW-1 was Kauli Beja Mgala, the 1st applicant. He testified that his parents and their four children (including the 1st applicant) entered this land in the year 1994 when he was 7 years old. His parents got two more children while resident on the suit land. His mother died in the year 1999 and his father remarried and continued living with the 1st applicant's step mother (the 3rd applicant) on this land. His father died in the year 2017. The 3rd applicant got six children when resident on the land. PW-1 testified further that he has developed a house on this land where he lives with his wife and two children, while his step mother has her separate house. They all farm on this land. He stated that he has never seen the respondent in his life.

3. PW-2 was Elijah Beja Mgala, the 2nd applicant. He is brother to the 1st applicant. He testified that on the land lives his brother and his step mother. He himself had built a house on the land but it collapsed. He generally lives in Ukunda town.

4. With the above evidence, the applicants closed their case.

5. The suit is not contested and the evidence on record is not challenged. I have seen that the respondent obtained title to the suit land on 20 December 1994. The evidence reveals that the respondent has never been on this land. I have observed that it was the father of the 1st applicant who brought his family here in the year 1994 and they settled on it. The 1st and 2nd applicants attained the age of majority around about the year 2004 and it can be said that from this time they had the requisite intention to possess and keep this land. The 3rd applicant on her part has been resident on the land since the year 1999. Twelve years from the year 2004 brings one to the year 2016 and this suit was filed in the year 2018. It is thus apparent that the applicants have accumulated the requisite 12 years of quiet, continuous and uninterrupted possession of the suit land so as to make them entitled to an order that they have obtained title to the suit land through the doctrine of adverse possession.

6. Given the above, I enter judgment for the applicants. I order that the title of Alice Waitthera Mwangi be cancelled and in place thereof, the applicants be jointly registered as proprietors of the land parcel Kwale/Mwangunda/57. I make no orders as to costs.

7. Judgment accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 28th day of January 2020.

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Mr Odundo holding brief for Mr. Birir for the applicants.

Court Assistant; David Koitamet.