

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 185 OF 2018 (O.S)

PETER NGOVE MAKAU.....APPLICANT

VERSUS

HENRY ODERO MBIRA.....RESPONDENT

JUDGMENT

(Claim to suit land by way of adverse possession; no appearance on part of the respondent; applicant demonstrating that he has been using the suit land as a parking for his hotel for a period in excess of 20 years without any interruption; judgment entered for the applicant)

1. This suit was commenced on 27 August 2018 by way of an Originating Summons taken out pursuant inter alia to the provisions of Order 37 Rules of the Civil Procedure Rules, and Section 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya. It is a claim for adverse possession over the land parcel identified as Subdivision No. 2010 (Original Number 1869/11) Section III Mainland North, CR 24644, delineated on Survey Plan No. 163746 (the suit land). That land is registered in the name of the respondent. An order was made for the respondent to be served through an advertisement in the newspaper, and this was duly done, but no appearance was ever entered for the respondent.

2. The case of the applicant, as outlined in his supporting affidavit and in his oral evidence in court, is that the applicant is an hotelier operating a hotel in Mtwapa. The suit land is adjacent to his hotel and he uses it as a parking lot for his clients. He testified that he has been using the suit land from the year 1993. He testified that the respondent has never come to the land and the rates for the suit land have never been paid. He stated that his possession of the suit land has never been interrupted for all those years that he has been in occupation of it.

3. After taking the evidence of the applicant, I did notice that the register of the suit land has a caveat and I directed the Land Registrar, Mombasa, to attend court to explain the nature of this caveat. The Land Registrar did attend and he testified that the caveat was placed by the Registrar of Titles but there was no indication why it was placed. He thought that the caveat may have been placed to stop any fraud on the title.

4. I have taken note of the above evidence and the submissions of counsel.

5. The evidence of the applicant is uncontroverted as the respondent made no appearance in the suit. I have no reason to doubt the evidence of the applicant. Among the documents that the applicant produced was a valuation report which affirms that the suit land is fenced together with two other plots and used as a parking for the guests of Prime Comfort Apartments, which is the hotel owned by the applicant. The suit land is laid with cabro blocks.

6. It does appear that applicant has been in occupation of the suit land and has in fact developed it for use as a parking and uses it together with adjacent land that he owns. I have no reason to doubt that he has occupied the suit land since the year 1995, which to time of filing suit, would be a period in excess of 20 years. I have no evidence that his possession has ever been interrupted.

7. I have no reason to doubt that the applicant has been in quiet, continuous, and uninterrupted possession of the suit land for a period of over 12 years, which is the period that one needs to accumulate in order to be entitled to land by way of adverse possession. I therefore declare that the applicant is entitled to proprietorship of the suit land by way of adverse possession. The Land Registrar is at liberty to proceed to register him as the new proprietor of the suit land. Since the original title may not be available, the Land Registrar to Gazette in the usual manner that a fresh title will be issued to the applicant without the production of the original.

8. I make no orders as to costs.

9. Judgment accordingly.

DATED and delivered this 23rd day of April, 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA