



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

CIVIL CASE NO. 94 OF 2018 (O.S)

IN THE MATTER OF LIMITATIONS OF ACTIONS ACT

AND

IN THE MATTER OF LR. NO. BUKHAYO/EBUSIBWABO/1168

AND IN THE MATTER OF CLAIM FOR ADVERSE POSSESSION

BETWEEN

CHARLES OWUOR ABOL.....APPLICANT

VERSUS

SAMUEL MUTHEE GITONGA.....RESPONDENT

J U D G E M E N T

1. The applicant took out this originating summons dated 28/11/2018 against the respondent seeking for orders that;

(1) The respondent's right over a parcel measuring approximately two decimal eight zero (2.80) hectares comprised in LR. NO. BUKHAYO/EBUSIBWABO/1257 got extinguished by adverse possession upon expiry of the 12 years from the date the applicant came into possession.

(2) The respondent be perpetually barred from taking and or using apportion measuring approximately two decimal eight zero (2.80) hectares comprised in L.R. No. BUKHAYO/EBUSIBWABO/1257.

(3) The Applicant be registered as the proprietor of the whole of L.R. No. BUKHAYO/EBUSIBWABO/1257 measuring approximately three (3) acres.

(4) The respondent do execute all the relevant documents to facilitate the transfer the whole of L.R. No. BUKHAYO/EBUSIBWABO/1257 into the name of the applicant and that in default the deputy registrar do execute the same in the place of the respondent.

(5) The Respondent do pay the costs of this case.

2. The respondent was served with the pleadings on 13th December 2018 but he failed to enter appearance or defend the claim.

3. To support his claim, the applicant relied on the contents of the affidavit sworn in support of his claim and his witness statement filed in court. In the affidavit, the plaintiff annexed a sale agreement dated 5th December 1990 executed between him and the respondent for sale of the land Bukhayo/Ebusibwabo/1257. The agreement provided that the entire purchase price of Kshs. 140,000 was paid in full on execution of the agreement. The certified copy of records dated 10/12/2018 also show the respondent as the registered owner as 10th September 1990.

4. The applicant stated that he has planted trees on the portion of the suit land and is in actual possession of a demarcated area measuring 3 acres. The applicant further stated that his homestead is also on the 3 acres and he is using the same to the exclusion of everyone else peacefully and without interruption for over 20 years.

5. The applicant submitted that he has proved his case therefore entitled to be granted the orders sought. In support of his submissions, he cited the Case of *Peter Mbiri Michuki Vs Samuel Mugo Michuki (2014) eKLR* where the Court of Appeal held thus;

“The plaintiff have to prove that they have used this land, which they claim as of right; nec vic nec claim nec precario, So the plaintiff must show that the company had knowledge (or the means) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavors to interrupt it by way of recurrent consideration.”

6. The facts set out by the applicant have not been contested. The applicant has also demonstrated how he came into possession of the land i.e. through a sale agreement. Time for a claim for adverse possession started running on the 7th year from the date of the agreement in this case from 1998. At the time of filing this suit, 12 years had lapsed. Secondly the applicant has proved that he is in actual possession of the suit land exclusively. He has developed it with his home and has planted trees on it. The applicant has met the threshold in the holding of the Case of *Sisto Wambugu Vs Kamau Njuguna (1983) KLR 172* that;

“where the claimant is in exclusive possession of the land with leave and license of the appellant in pursuance to a valid agreement, the possession becomes adverse and time begins to run at the time the license is determined.”

7. In conclusion, I am satisfied that the applicant has proved his case within the standard set in civil law. Accordingly, I enter judgment in his favour as prayed in his summons but with no costs as the suit proceeded undefended.

Dated, signed and delivered at BUSIA this 15th day of April, 2020.

A. OMOLLO

JUDGE