



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MIGORI**

**ELC CASE NO. 839 OF 2017(O.S)**

**IN THE MATTER OF LIMITATIONS OF ACTIONS ACT CHAPTER 222 LAWS OF KENYA**

**AND**

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION PURSUANT TO SECTION 38 OF LIMITATIONS OF ACTIONS ACT**

**BETWEEN**

**HON. PHOEBE ASIYO.....PLAINTIFF**

**VERSUS**

**HARRISON ASETO KOLA.....DECEASED**

**Sued as the Legal Administrator of KOLA NYAKINDA , DECEASED**

**JUDGMENT**

1. By an originating summons dated 29/7/2017, the plaintiff is seeking from the defendant the following orders

a) A declaration that the defendant's right to recover a portion of L.R. NO. SOUTH KARACHUONYO/KAMENYA/1498, measuring approximately 4 Ha, is barred under the Limitation of Actions Act, Chapter 22 of the laws of Kenya. And his title thereto extinguished on the grounds that the plaintiffs herein has openly, peacefully and continuously been in occupation and possessions of the aforesaid portion of the parcel of the land herein for a period exceeding 12 years.

b) That there be an order that the plaintiff be registered as the proprietor of the portion measuring 4 Ha. of L.R . No. SOUTH KARACHUONYO/KAMENYA/1498 in place of the defendant.

c) That there be an order restraining the defendant by himself, relatives, agents, servants and/or employee from interfering with the plaintiffs peaceful possession and occupation of the said portion of the parcel of land that is LR NO. SOUTH/KARACHUONYO/KAMENYA/1498 in any manner whatsoever and/or howsoever.

d) Costs of this originating summons be borne by the defendant.

e) Such further and/or other orders be made as the court may deem fit and expedient, in the circumstances of the case.

2. The originating summons is anchored on grounds including :-

a) The plaintiff herein entered into land sale agreement with one HARRISON ASEO KOLA in respect of LR NO. SOUTH KARACHUONYO/KAMENYA/1498, on the 28<sup>th</sup> day of September 2004.

b) Upon entering into sale agreement, the defendant undertook to carry out succession in order to transfer the suit land into the plaintiff's name since the suit land was still registered in the plaintiff's deceased father's name i.e KOLA NYAKINDA, which undertaking the defendant has refused, failed and/or ignored to take into effect.

c) The plaintiff's possession and/or occupation of the sold portion of the suit land herein has been continuous and without interruption for a duration of over 12 years.

**d) The plaintiff has since acquired prescriptive rights over the sold portion of the parcel of land herein.**

3. In a replying affidavit sworn on 17/10/2017, the defendant denied the plaintiff claim. He started , inter alia; (paragraph 6)

**(6) “that I am indeed ready to have the same transferred into the plaintiff’s name any time provided the interference by my brothers cease. ( Emphasis provided)**

4. The plaintiff is represented by learned counsel Odero Nyakwana. The defendant appears in person herein.

5. The suit is for mention today. The parties have entered into a consent dated 8/2/2018 and it reads;-

**“By consent of both parties it was ordered;-**

a) That Judgment be and is hereby entered in favour of the plaintiff in terms of prayer 1,2, and 3 of the originating summons dated 29/9/2017.

b) That each party to bear its costs.

c) That the matter be marked as settled.”

6. I have considered the originating summons, the replying affidavit and the consent order duly signed by both parties to this suit. Has the plaintiff acquired adverse possession over the suit land and he is entitled to the relief sought?

7. The plaintiffs claim is not denied by the defendant. The claim is fortified by the said consent of both parties to this suit. The plaintiff is on the defendant’s land without justification; See Clerk & Lindsell on Torts. Furthermore, the consent by the parties is meant to promote alternative dispute resolution methods under Article 159(2) (c) of the Constitution of Kenya, 2010 and as recognized in the case of Council of Governors V- Senate & anor (2014) KLR – SCK.

8. In the upshot, I adopt the consent of the plaintiff and the defendant.

9. I enter judgment accordingly.

**G.M.A. ONGONDO**

**JUDGE**

**DELIVERED, SIGNED and DATED** in open court at MIGORI this **8<sup>th</sup> day of February** 2018.

**G. M. A. ONGONDO**

**JUDGE**

**In the presence of:**

Mr. Odero Nyakwana counsel for the plaintiff

The defendant in person

Tom Maurice - Court assistant

**G. M. A. ONGONDO**

**JUDGE**