



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU

CIVIL SUIT NO.208 OF 2011

AGUSTINUS OJWANG OBALA.....PLAINTIFF

VERSUS

JACOB ODHIAMBO OBALA a.k.a OBALA OBALA..... DEFENDANT

JUDGMENT

1. **Augstinus Ojwang Obala**, the Plaintiff commenced his claim through the originating summons dated 17th November 2011 against **Jacob Odhiambo Obala a.k.a Obala Obala**, the Defendant, seeking for the following orders;

- a) That the Plaintiff be declared the proprietor of **Kisumu/Wangaya 1/3278** by virtue of adverse possession.
- b) That the Plaintiff be registered as the proprietor of the said land by the Land Registrar.
- c) The Defendant do meet the costs of the suit.

The summons are based on the four grounds on its face and the affidavit in support sworn by the said **Agustinus Ojwang Obala** on the 17th November 2011.

2. The Plaintiff's case is that the Defendant is his brother by a different mother and that he got registered with land parcel **Kisumu/Wangaya 1/3278** even though he (Plaintiff) was the one who has been occupying it exclusively for about 42 years.

That he has buried five of his deceased children on that land and has been tilling it without the Defendant raising any objection. He produced a copy of the register and certificate of official search for parcel **Kisumu/ Wangaya 1/3278** showing that it was first registered on 23rd October 2003 in the names of **Obala Obala** who later changed the names to **Jacob Odhiambo Obala** on 9th September 2011. The Plaintiff testified that the Defendant occupies land parcel **Kisumu /Wangaya 1 /3230** which is about one mile from the suit land.

3. The issues for courts determination are as follows:

- a) Whether the plaintiff entered onto the suit land without the authority of the registered proprietor.
- b) Whether the Plaintiff has used the suit land without any interruption of the registered proprietor for more than 12 years.
- c) Whether the registered proprietor's title to the suit land has been extinguished by the Plaintiff's

occupation.

d) Whether the Plaintiff should be registered as proprietor of the suit land.

e) Who pays the costs.

4. The court has considered the grounds on the originating summons, the Plaintiff affidavit and oral evidence and come to the following determinations;

a) That indeed the suit land got first registered with the Defendant in 2003 though the Plaintiff had been in occupation since 1975 with the blessing of his late parents.

That the adjudication process had not commenced then. That when the adjudication process started the Plaintiff believed that the land would be registered in his names and it was not until October 2011 that he discovered that the Defendant had been registered as the proprietor and he commenced this suit.

b) That the finding in (a) above shows that the Plaintiff had occupied the land that was after adjudication registered as **Kisumu/Wangaya 1/3278** with the permission of his parents. The Plaintiff occupation was therefore not adverse to the title of the owner. The Plaintiff could also not have been in adverse possession of the said land for the period between adjudication and 2011 as he believed the land would be registered in his names. One cannot be in adverse possession of his own land.

c) That after adjudication the Plaintiff continued occupying the suit land as of right in the believe that the land was his until 2011 when he discovered that it was registered in the Defendant's names. That the plaintiff's occupation of the suit land became adverse to the title of the registered proprietor, the Defendant, from the year 2011 when the Plaintiff realized that the land was not his.

e) That for title to land to be extinguished, under **Section 17** of the Limitations of Actions Act Chapter 22 of Laws of Kenya the person claiming to have been in adverse possession must have been in occupation for a continuous and uninterrupted period of more than 12 years, which is prescribed under Section 7 of the said Act.

5. That the originating summons herein was filed before the twelve years lapsed and therefore the suit fails though undefended.

6. That for reasons set out above, the Plaintiff has failed to establish his claim against the Defendant to the standard required of balance of probabilities and the suit is dismissed with no orders as to costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 13TH DAY OF JULY 2016

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mrs. Onyango for Odongo for Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/7/2016

13th July 2016

S.M. Kibunja J.

Oyugi court Assistant

Parties absent

Mrs Onyango for Odongo for Plaintiff.

Court: Judgment read over in open court in presence of Mrs Onyango for Odongo for Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/7/2016