



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
ENVIRONMENT AND LAND CASE NO.225 OF 2013
HENRY WANYONYI NABUTOLA.....PLAINTIFF
VERSUS
CHEBUSIRIRI IWALA.....DEFENDANT

JUDGEMENT

[1]. The applicant Henry Wanyonyi Nabutola filed this originating summons praying for the following orders;

1. *That the Applicant has been in occupation of 3 acres comprised on land parcel No.Kimilili/Kamukuywa/380 for a period exceeding 12 years and has therefore acquired title thereto by way of adverse possession.*
2. *A declaration that after upon expiration of 12 years, the respondents could only be registered to hold the said 3 acres in trust for the Applicant.*
3. *That under section 38 of the limitation of actions Act Cap 22 of the Laws of Kenya, the Applicant be registered as the proprietor of the said 3 acres.*
4. *The Respondents be ordered to execute all documents of transfer to vest the said 3 acres in the names of the Applicant failing which the Deputy Registrar of this Court be empowered to do so.*
5. *That costs of this suit be borne by the Respondents.*
6. *That this Court to grant any other relief it may deem fit to grant.*

The application was supported by his affidavit dated 12th August 2013. The originating summons was served upon the respondent who filed a notice of appointment of advocate on 5th November 2013.

[2]. A hearing date was taken for 18th June 2015 and the same was served on the respondent on 13th January 2015. The respondent has not filed any other pleadings at all.

[3]. The applicant gave evidence that he lives on the suit land occupying three (3) acres. He said he knew the defendant sold the three acres to him in 1983. He stated that he entered into a sale agreement with the respondent and thereafter paid Kshs.66,000/- as purchase price. He produced the agreement as Plaintiff Exhibit 1. He also produced a search certificate showing the land belong to the respondent. He said he

has built a house and has planted trees and is cultivating therein. He said that he started living therein in 1963. The applicant produced a valuation report. The valuation was produced as Plaintiff exhibit 3.

He averred that he has no title deed since the respondent who sold the land to him have refused to transfer the land to him. He produced letters to the respondent demanding that he transfers the land to him and a further letter from the Chief of Makanga location stating that he has been on the land for over 12 years produced as Plaintiff exhibit 5. The plaintiff said that he has lived on the suit land for a period exceeding 12 years.

That he has done so peacefully and that the three acres should be registered in his name.

The respondent never attended the hearing and never adduced any evidence.

[4]. There is no doubt that the applicant entered the suit land through sale. He initially was a licensee. This was a land control area. The sale agreement dated 2nd August 1983 became void for lack of the necessary land control consent after 6 months on February 3rd 1984. The applicant then became a trespasser and the respondent was well within her rights to ask the applicant leave and vacate the suit land. She was only entitle to refund to him the purchase price. She did neither of that. The applicant continued on with his now illegal occupation. He has done so until now, a period of over 30 years now. He said that he occupies the entire 3 acres.

The certificate of official search dated 9/5/2014 and produced in Court shows the land to be 3 acres. The valuation produced in Court by Mwamba valuers show extensive developments by the applicant on the entire suit land. It is now valued at Kshs.1,500,000/-.

I am therefore convinced that the applicant has been on this land for a period exceeding 30 years. The applicant's occupation is free and without force. Such occupation though initially was through licence, by operation of law, the same became illegal and plaintiff became a trespasser. He has persisted on such trespass since 1984. I am convinced that the respondent has never asked him to move out and vacate the same.

I hold that the applicant has thus acquired the same by adverse possession.

I order that land parcel No.Kimilili/Kamukuywa/380 shall be registered in the name of the applicant absolutely.

The respondent shall sign all the necessary transfer documents failing which the deputy Registrar of this Court shall do so.

The applicant shall pay all the necessary fees for such transfer.

I order that each party bears its own costs.

DATED at BUNGOMA this 9th day of July, 2015.

S. MUKUNYA

JUDGE