



REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
LAND & ENRIVONMENT NO: 31 OF 2012

- 1. MOHAMED KWEYA OJUOK
- 2. ABISAI ORINA OMOLO
- 3. NORA KOMBO TOLOI
- 4. SELFA INDAKWA ANANGWEPLAINTIFFS
- 5. ABUBAKAR ABDI BIRO
- 6. JACOB RATANDE MUKABANA
- 7. TAWAKAL ABDULRAZAK BURHAN

VERSUS

MUMIAS MUNICIPALITY COUNCIL.....1ST RESPONDENT

KAKAMEGA COUNTY COUNCIL.....2ND RESPONDENT

JUDGEMENT

The plaintiffs herein sued the two defendants seeking to be recognized as the owners of plot number **SOUTH WANGA/EKERO/772** that was sub-divided into plot numbers **SOUTH WANGA/EKERO/2363** and **2364**. **MOHAMED KWEYA OJUOK** testified on behalf of all the other plaintiffs. It is the plaintiffs’ claim that they reside on the suit land. The land was allocated to them by the Nabongo, Chief Mumia in 1933 and their families have been living on the land since then.

The 1st plaintiff testified that when adjudication was done in 1967 the land was registered in the names of the Kakamega county council and was set aside for the **Nubian Estate**. However, in 2002, the land was sub-divided into plot numbers **2363** and **2364** without their knowledge. It was alleged that the plaintiff’s were compensated but that allegation is not true.

According to the plaintiffs they live on the land and there is no one else who is claiming the land. They would like the land to revert to its original plot number **772**. They are poor people who depend on the land. They produced some letters from different Government offices.

The defendants herein were served but did not enter appearance or file defence. They were served with a hearing notice but did not attend court and the matter proceeded ex-parte. One of the letters produced by the plaintiffs is dated 21/8/2003 from the Western provincial physical planning officer. It is indicated in the letter that the Government compulsorily acquired the land from the plaintiffs but the manner of compensation had not been settled. Another letter dated 17/12/2002 from the Western Provincial Commissioner’s office indicate that there were 216 plots that were allocated to members of the public on 1st August 2000 at a ceremony presided over by the then Provincial Commissioner, Mr. Zachary Ogongo. I have also seen a letter written by the Mumias Division District officer indicating that the land was a Settlement area that was occupied by Arabs, Nubians and other people since 1936.

Given the evidence on record I do find that the plaintiff's have been living on the suit land for quite some time. The plaintiffs are not seeking title by way of adverse possession. Article 40 of the Constitution Recognizes the right to own property. It is clear to me that the plaintiffs' ancestors occupied the suit land since the 1930's and their children, grandchildren and great grand children have also been occupying the land. It appears that the land was mainly occupied by people of Nubian and Arab origin. The plaintiffs would like to be recognized as the lawful owners of the land. If the land was compulsorily acquired by the Government, it is not clear what was the purpose of the acquisition. There is no proof of compensation.

From the evidence on record, I am satisfied that the plaintiff's have proved their case on a balance of probabilities. They live on the suit land and like any other Kenyans have a right to own property. I do grant the prayer that the sub-divisions of the original plot No. **SOUTH WANGA/EKERO/772** into two plots be and is hereby nullified. The titles for plot numbers **SOUTH WANGA/EKERO/2363** and **2364** are hereby revoked and the land shall revert to Plot number **SOUTH WANGA/EKERO/772**. I do further order that plot number 772 be registered in the names of **MOHAMED KWEYA OJOUK, ABISAI ORINA OMOLO, NORAH KOMBO TOLOI** and **ABUBAKAR ABDI BIRO** who shall hold in trust for their own benefit and for the benefit of all the 72 people and their families as per the list of 72 inhabitants filed in court on 11th December, 2012. The Deputy Registrar of Kakamega High Court is hereby directed to execute all the transfer and other relevant documents in favour of the plaintiffs. The plaintiffs shall meet their own costs.

Dated, delivered and signed at Kakamega this 16th day of October 2014

SAID J. CHITEMBWE

JUDGE