



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MALINDI

Civil Case 105 of 2007

UTE GOODWIN

IRINE ELIZABETH GOODWIN.....PLAINTIFFS

VERSUS

BRIGITTE PFISTER.....DEFENDANTS

JUDGMENT

Ute Goodwin (1st plaintiff) and Irine Elizabeth Goodwin (2nd plaintiff) have field this claim against Brigitte Pfister (the defendant).

The claim is by way of originating summons dated 14-12-07 and relates to a portion of Land LR Malindi South /1912 Registered at Mombasa Registry in Vol. No. 36 Tolw 185/file No. 4628.

The plaintiffs seek for a declaration that they have acquired title over the land by virtue of adverse possession. This is on the basis that they have lived and occupied the same for over 12 years and used it peacefully and without interference from the defendant or anyone on her behalf.

It is the plaintiffs' contention that they are now entitled to be registered and issued with a certificate of title over the same, in place of the defendant.

In the supporting affidavit sworn by Ute Hertha Goodwin, she states that in 1992, she and her daughter (2nd plaintiff) lawfully moved into the suit premises at a time when it was dilapidated and had even been vandalized.

At the time, one Mr. Blume was then in the house and requested the Goodwins to move in and take care of the house while he went to Europe. The 2nd plaintiff lent him Ksh. 60,000/= which he undertook to refund upon his return.

At the time, the said Mr. Blume informed the plaintiffs that he was the rightful owner with full rights over the premises. The plaintiffs reformed the premises to a habitable condition and it became their home and even the rest of the family members would be accommodated there; and the plaintiffs have since maintained the premises as their own.

Meanwhile Blume never returned to take over the premises on or to refund the money advanced to him or reimburse the expenses incurred in repairing and caring for the premises. Subsequently, the plaintiffs have been in occupation of the premises since 1992 – completely uninterrupted.

Ute Goodwins then gave viva voce evidence in court – she confirmed that although she was living on his Malindi South /1912, since 1992, the same is not registered in her name – the same is registered in the name of Mrs. Brigitte Pfister and a certified indenture executed on 2-6-83 was produced as Ex.1 so just how did the Goodwins get to have Mr. Blume allowing them into the premises?

Ute testified that they used to have a hotel just next to that property and they needed accommodation for their family so they moved into that property in 1992 with the permission of Mr. Blume. Incidentally Mr. Blume, (who PW1 refers to as the agent) had been staying there for 5 (five) years, gave them the indenture (Ex.1).

She claims that Mr. Blume had sold everything, including the window louvers and the Goodwins had to bring in everything to rehabilitate the place. Since then, they have never received notice to vacate, from the registered owner or anyone else. No one has even come to claim the premises.

In 2001, plaintiffs registered a caveat fearing that the registered owner might sell it without their knowledge yet they had acquired legal and equitable rights – the caveat and restriction are produced as Ex 2A and 2B.

A search carried out shows that defendant is still the registered owner – the search certificate is Ex3.

On 6-3-08, the plaintiffs served summons of this case through the Daily Nation Newspaper, yet so far, no one has come forth. Are the plaintiffs entitled to have the land declared as therein and it be registered in their names?

In his written submissions, Mr. Otara, counsel for plaintiffs pointed out that the issues to be dealt with are:

- (1) Whether the plaintiffs have adversely occupied the premises peacefully and uninterrupted for a period of more than 12 year.
- (2) Whether they are entitled to the reliefs sought.

It was Mr. Otara's contention that PW1's evidence clearly demonstration that they have enjoyed uninterrupted occupation since 1992 and despite summons being served (by way of advertisement in the Daily Nation Newspaper), to the defendant, to date, there has been no response Mr. Otara also submitted that plaintiffs have been in actual possession for the 12 year period. Further that the possession has been open and notorious, exclusive and continuous and completely without any interruption and so that possession has become a claim of right.

What are the principles governing adverse possession? Certainly a party must demonstrate that they have enjoyed continuous, uninterrupted occupation for a period of 12 years and that such possession has not been secretive. That has been clearly demonstrated by the evidence availed here.

Consequently the plaintiffs have established a good claim and I do grant orders that:

- (1) The plaintiffs are entitled to be declared as proprietor of LR Malindi South/1912 which they have acquired by adverse possession having lived on and occupied the same for over 12 years and used it peacefully and without any interference from the defendant or anyone else on her behalf.
- (2) The plaintiff are entitled to be registered and issued with a certificate of Title over the same in place of the defendant.
- (3) Costs of this suit to the plaintiffs.

Delivered and dated this 2nd day of **October 2008** at Malindi.

H. A. Omondi

JUDGE