



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO. 331 OF 2010 (O.S)

In the matter of: The parcel of land plot No 486/V/MN (C.R 87280)

AND

In the matter of: The Limitation of Actions Act of Actions Act (Cap 22)

BETWEEN

HAMISI BEJA & 18 OTHERS.....PLAINTIFFS

-VERSUS-

KARIM MOHAMMED HASSANALI

AMIN MOHAMMED HASSANALI.....DEFENDANTS

JUDGEMENT

1. The nineteen (19) plaintiffs moved this Court vide their originating summons dated 7th January 2010 seeking to be declared as owners of all that land parcel No 486/V/MN (C. R 8728) by virtue of adverse possession. They also sought a declaration to be made on whether the 4th defendant abused his powers as the Chief of Miritini Location by failing to take into consideration that the applicants had been living on the suit land for over 40 years and that evicting them turn them into internally displaced persons. The applicants also prayed for costs of the suit.
2. The suit is opposed by the 1st – 3rd Respondents. The 3rd Respondent through its Town Clerk swore a replying affidavit dated 24th May 2011. The Town Clerk deposed that the 3rd Respondent is a stranger to the claims made by the applicants and in particular that a building surveyor of the 3rd Respondent went to the suit property and caused the land to be subdivided. That according to their records, the suit plot is registered in the names of the 1st and 2nd Respondents.
3. The 1st and 2nd Respondents filed a joint replying affidavit dated 25th November and further replying affidavit dated 15th July 2011. The 1st and 2nd Respondents pleaded that the suit property is family land which they acquired by way of transmission from their deceased father. That they have been running a slaughter house on it since the 1980s.
4. Before the hearing commenced, Justice Nzioka had visited the suit property on 16th February 2012 and recorded her findings in the file. There was also an order for joint survey which report was annexed in the replying affidavit of the 2nd Respondent sworn on 20th April 2016 in opposition to the application dated 27th August 2014 seeking to add more parties to the suit. I will make my comments on the same at the analysis of the evidence stage.
5. The plaintiffs called a total of 16 witnesses with the 16th witness being a licensed surveyor. Mr Hamisi Beja testified as PW 1 on 21st November 2011. He stated that he was born on the suit land and has been living on it since 1977. That he occupies 6 acres and he grows maize on this portion twice a year. That he also cultivates other crops like coconut, or oranges, “mugola” and sugar cane. PW 1 said he has 4 brothers and that he has come to Court for himself and his brothers over the six acres portion since they inherited the said portion from their father. PW 1 continued that they are using the whole 6 acres amongst the siblings in undivided shares.
6. PW 1 stated further that he became aware of the 1st and 2nd Respondents in the year 2009 when the Chief (4th Respondent) told them the land belonged to them (1st and 2nd Respondents). The Chief came to tell them to vacate the plot. It is PW 1’s case that the land belonged to them as the Duruma Community. He filed this case for them to be given ownership since he has been on the land for more than 20 years.

7. In cross – examination, PW 1 stated that he stays at Bonje which does not form part of the suit land. That he has crops planted on the suit property. That he had no authority signed by his brothers to bring the suit on their behalf and his brothers are not parties to the suit. That their claim is based on the coconut and mango trees that they planted. He did not recognize the title deed held by the 1st and 2nd Respondents. PW 1 did not know how the 1st & 2nd defendants came into possession of the suit land. He stated that there has been a slaughter house on the suit land for a period of time. That he found it existing when he was born. He admits not living on the suit land but said he uses the 6 acres for farming. That they only put up temporary structures during planting seasons to protect the crops from being destroyed by animals.

8. During the hearing conducted at the suit property, PW 1 stated that the whole land is measuring 189 acres. That they were not claiming the fenced area which enclosed the slaughter house. The houses of applicants Nos. 2, 3, 10, 12, 13, 14, 17 and 18 were also shown to the Court during the visit. PW 1 confirmed he did not have a house on the suit land but only comes to plough it. That applicants No 4 and 9 also did not have houses on the suit land. Applicants No 2, 3, 10, 12, 13, 14, 15 & 17 at the site told the Court they did not know the exact acreage of their portions as the measurements had not been done. The 1st Respondent on his part stated that they were claiming the entire land including where some of the applicants' houses had been built. That the locals have been erecting shanties at night near the slaughter house and they create a nuisance. The Court there and then gave an order for demolition of the shanties near the slaughter house.

9. Wilson Mwanyuni Ngoro gave evidence as PW 2. He is the 17th plaintiff. He adopted his witness statement dated 21.4.2016 as his evidence in chief. He produced a copy of the title to the suit property as Pex 5 and survey report as MFI P. 4. In his witness statement, PW 2 stated that he has lived on the suit plot since birth in 1961 with his wife and 9 children who he listed their names. That his son Robert Ngoro also lives on the suit land with his wife. That he lives on the land with his brothers Joseph Mwayawa, Janet Kavumbi, Samuel Ngoro, Dzinzi Ngoro. PW 2 was claiming 4 acres. That his brothers live on their own portions and all of them cultivate the land. That they lived on the land peacefully until 2009 when their area Chief informed them that the land belonged to the 1st & 2nd Respondents. That he knew these Respondents as they operated a slaughter house and they had never asked them to move out.

10. In cross – examination, PW 2 stated that he has lived on the suit land all his life. That the suit land is called mabanda ya ng'ombe because it used to have a cow shed. That he lives partly in Changamwe and partly on the suit land. That his father had no claim over the suit land. That he did not know the defendants were the registered owners until 2009. PW 2 knew the land belonged to the defendants' father. That the defendants' caretaker Stephen Mlewa found him on the land. That several people were employed by the defendants' father in the slaughter house including the 3rd plaintiff. That they are claiming plot No 486 but the search document shows No 139/MN. PW 2 denied being a squatter on Ajay's land. That they did a survey of their land after the Court directed.

11. CHARO KALUME GONA testified as PW 3. He is the 10th plaintiff. PW 3 stated that he lives on the suit land with his two wives and 10 children. That he lives on 4 – 5 acres and cultivates it as well as keeping goats and chicken. He is 69 years old.

12. PW 3 in cross – examination stated that he knew the 1st defendant because he used to come with his father to the slaughter house. That PW 3's father worked for Bell who sold the land to the defendants' father. He denied there were only six (6) houses on the land during the Court visit. That he did not know the size of his land because he had not taken measurements. In re – examination, PW 3 stated that the slaughter house occupies approximately 4 acres.

13. PW 4 was Keya Chibugua, the 18th plaintiff. As per his ID, he was born in 1950 at mabanda ya ng'ombe. That he lived on the land with his family and also cultivated it. PW 4 denied inviting any one on the land. He denied owning any land in Kinango. That he sued Karim (1st defendant) because he owns the slaughter house. He wanted to be given the portion where his home and coconut trees are. He did not know the size he was claiming.

14. PW 5 Nyanje Kombo Tsuma, the 15th plaintiff also stated that he was born on the suit land in 1973. That he also cultivates it and was claiming approximately 2 acres. That he has 4 houses on the suit land and he inherited the land from his father. That the slaughter house belongs to the 1st defendant. That the Judge did not see houses beyond the slaughter house because they were not visible from where she was standing. That the 14th plaintiff is also deceased.

15. Madzaya Kwekwe Karume the 7th plaintiff gave evidence as PW 6. That he was born on the land in 1967. He has planted coconut trees and food crops. He claims 2.21 acres which he inherited from his father. That he knew the defendants since their father operated the slaughter house. PW 6 said in cross – examination that he has not built on the suit land but uses it for farming. That before him, his parents had planted coconut trees. He had not taken letters of administration in respect of his father's estate. That the land belongs to his father and he does not know if there was an agreement between the defendants and his father. PW 6 stated in re – examination that the slaughter house occupies about 1 ½ acres and it was built after he was born. That he got the 2.21 acres from his father who used to farm it.

16. The 12th plaintiff Bahasi Mwandimi testified as PW 7. He lives on the suit land but could not tell the size he occupies. That he has two houses on it and also farms it. That in his statement, he has recorded he is claiming 6 acres. That he has also buried his parents on the suit land. On location given on his ID, PW 7 stated that he lied to enable him get an ID. That he built his house on the land "kitambo". That he knew Karim when they used to come to the slaughter house as they (defendants) are always on the land. That if he is told to lie to get the land, he will agree. He confirmed the defendants have never left the land. PW 7 said he got on to the land with the consent and permission of the defendants. His two houses are close to each other. In re – examination, the witness said he never asked the 1st defendant for permission and that when he was born, he found the slaughter house on the land.

17. The 6th plaintiff testified as PW 8. Rajab Bekwekwe said he was born on the suit land in 1970 and was given the land by his parents. That he lives on the land with his family and farms food crops. In cross – examination, PW 8 said he does not have a house on the suit land. He is claiming 6.24 acres where he has planted coconut trees, bananas and sugar cane. That he is the only one entitled to this portion. He denied it is the same area shown by photographs of the 7th plaintiff. That his father died around 1978 when he was 8 years old and his father had built at Mwamduu where they live todate. He could not tell how long he had cultivated the land except that he inherited it from his

father.

18. PW 9 was the 5th plaintiff. Mr Hamisi Katembe said he cultivates the portion he is claiming which is about 5 acres. That he has used the farm since he was 15 years old and now he is 39 years old. PW 9 said he has never sought permission from the defendants to use the land. That the slaughter house is on 4 acres and when he was born, he found the slaughter house on the land. In cross – examination, he denied his plot is on the road. He denied running away during the Court visit. That he entered the suit land because his father used to cultivate it. That his father gave him the land when he was 5 years old. He admitted that in 2009 they were asked to move out/leave the land. In further cross – examination, PW 9 said he works as a turn boy and travels most times when the “mzigo” is ready. That he engages casual labourers to work on the farm. That he is using the land with two of his brothers who are not parties to this suit.

19. Mwangoza Tsuma the 13th plaintiff testified as PW 10. He said that he has lived on the suit land for a long time together with his children. That he also cultivates it and has used the same without permission of the defendants. In cross – examination he said the national ID indicates he was born in Mwamduu Kwale which is not true. PW 10 claims 8.82 acres which he said he cultivates and has buried his relatives on it. That he knew the defendants and their father as they used to operate a slaughter house on it and the defendants never asked them to move out. PW 10 was not aware if any people moved out or were paid. According to PW 10, the slaughter house was only built two years ago. PW 10, said he is claiming 5 acres only where he lives and cultivates with his family. That his children are not parties to the suit. In re – examination, PW 10 said he did not know the size of the land. That the slaughter house is operational.

20. Mambo Rama Nzuri testified as PW 11. He adopted his statement dated 30.10.2017 as his evidence. He is the 9th plaintiff. PW 11 is claiming 3.75 acres which he stated he has been cultivating together with his mother and 4 brothers. That he inherited the land from his father. He knew the defendants because they operated a slaughter house yet the defendants have never asked them to move out. In cross – examination, he stated that he lives in Miritini and works at a slaughter situated at uwanja wa ndege – past mazeras. He could not remember the year he built his house but said it was long ago. That their houses are not on the suit land except they cultivate the suit land. In re – examination, PW 11 said they have cultivated the land for over 30 years.

21. MATANO KEYA alias Bongo Keya (4th plaintiff). He is a boda boda cyclist. He stated that he lives on the suit land with his family comprised of two wives and nine children as well as two of his (PW 12) brother’s and their families. That he occupies approximately 13.26 acres. PW 12 said he inherited the land from his father. In cross – examination, PW 12 said he is over 40 years old. That he does not live on the suit land but has been cultivating it since 1995. That he did not have an agricultural officer’s report to confirm the crops are his or a certificate to confirm the photographs were taken on the suit land. That their photos look similar because the plaintiffs have planted similar crops. That he is also claiming the land where he lives through adverse possession and have filed the case in Court. In re – examination, he said the two plots are separated by a railway line.

22. PW 13 Kuri Bembeyu Kuri is the administrator of the estate of Peter Kuri (8th plaintiff). He stated that his father and grandfather lived on the suit land. In cross – examination, PW 13 stated that in 2010, his father was already dead i.e. he died in 2009 before the letters of administration were obtained. PW 13 was born in 1989. He was claiming the land on behalf of his father’s estate. He obtained the letters of administration in 2018. He was informed when the suit was filed after their area Chief asked them to leave the land.

23. Tata Mwamta Ngale is the wife of Mwamta Ngale(14th plaintiff). She testified as PW 14 stating that her husband died after this suit was filed. That she was married and brought up all her children on the suit land. That during site visit, she did not state size of land they are claiming but they are claiming approximately 4 acres.

24. PW 15 is Khamisi Kobo Godana. He said he is the brother to Bembeyu Kuri (2nd plaintiff) for whom he had taken out letters of administration. His evidence was to support his brother’s claim of 10 acres of the suit land. He admitted that he had not measured the land. In re – examination, PW 15 stated that Bembeyu lived only on this land.

25. PW 16 Mary Nyula Suma is legal representative of the 19th plaintiff. Her evidence was rejected by the defence counsel stating that she was not properly joined. She was therefore stood down.

26. PW 17 Edward Kiguru is a licensed land surveyor. He stated that he was requested by the plaintiffs to prepare a report in 2012. He was instructed to do identification of boundaries of the suit land and also identify the extent of land occupied by the plaintiffs. He conducted the exercise and compiled a report which he produced as Pex 4. In cross – examination, PW 17 said he received verbal instructions from the first plaintiff. That his role was to tell the size of land occupied by each family. That the land comprises the hills and valleys. That his map does not show there is a valley. That he did not note the names of the persons who identified the boundaries.

26. The witness in further cross – examination stated that from the map, it is possible all plots end at the valley. He did not see the title to the land. That he used the official survey plans which show the land is not subdivided. He did not confirm where cows for slaughter are kept. PW 17 did not establish ownership because he knew of this case. That portion 11 belongs to Nyanje Kombo and as per the map, he is claiming 22.36 acres. That he would be surprised if Nyanje Kombo is only claiming 2 acres. He could not confirm meeting Kombe Katana who owns portion 3 measuring 16.75 as per the map. He did not know whether Mr Katana was only claiming 3 acres. According to him, the claimants are occupying 90% of the suit land. In re – examination, PW 17 could not confirm the names/number of people living on the land. That there was agricultural activity at 90%. This marked the close of the plaintiffs’ case.

27. Karim Mohamed Hassanali testified on 2nd July 2018 as DW 1. He said the suit land is registered in their joint names and produced a certified copy of the title as Dex 1. DW 1 said his father acquired the property before he was born. They had a meat shop in Mombasa while they slaughtered animals on the suit land. According to the 1st defendant, most of the plaintiffs were employees in the slaughter house and that they had never lived on the suit land. That the plaintiffs would be engaged to slaughter the cows, get paid and go away as well as till the land and carry away their harvest. That the temporary structures were only put up when filing this case. DW 1 said they have possession of the land and only get interference from these invaders. DW 1 denied permitting anyone to live on the land for more than 12 years. That they became registered owners in 2008 and none of the plaintiffs were on the land before then.

28. DW 1 continued that the land was being used to graze cows before slaughter. That they have workers on the land stating the plaintiffs just created marks for the surveyor to adopt. It is the defence case that when the plaintiffs began building on the land, he used the area Chief to stop them. He said the plaintiffs are professional squatters and urged the Court to give an order to evict them.

29. In cross – examination, DW 1 said they currently have 5 workers on the land. That when the Court made the site visit, the operation of the slaughter was on-off. That some of the plaintiffs were workers at the slaughter house but he could not tell who. That people apply to use the slaughter house and during the time, the cows graze on the land depending on demand. That the slaughter house is not fenced. DW 1 said the coconut trees on the land belong to them and some mango trees. That there are no sugar cane on the land. He denied that plaintiffs have homesteads on the suit land. DW 1 said they use the whole 189 acres of land for slaughter and grazing. That he needed more land to bring 1000 cows to do the slaughter in a big way. DW 1 denied the plaintiffs are doing extensive farming on the land. In re – examination, DW 1 stated that the slaughter cannot exist without the land because you need grazing land. That the 18 persons have not occupied the land to stop him from doing business. DW 1 maintained that they are still in possession of the land. He urged the Court to dismiss the plaintiffs' case with costs.

30. At the close of the hearing, the parties' advocates filed written submissions. The plaintiffs submitted that they have demonstrated uninterrupted possession for a period of over 12 years hence are entitled to vacant possession. He then submitted on the decision of **Joseph Situma vs Nicholas Cherongo (2007) eKLR** that discusses what amounts to proof of adverse possession. The plaintiffs submit that the 15 applicants through their evidence testified that they were in actual possession of the suit land. Mr Tindi advocate proceeded to give summaries of their evidence. In explaining the discrepancies contained in the sizes of land contained in the survey report vis – a – vi the oral evidence tendered, Mr Tindi submitted that this was because the 19 plaintiffs were under the impression that they represented the other 400 applicants who applied to join the suit after the hearing had commenced. The plaintiffs also asked the Court to take note of the fact that the slaughter house has not been operating since the year 2000.

31. The defendants on their part submitted that the plaintiffs did not prove their case because they failed to identify their boundaries and did not cite the correct provisions of the law in their originating summons as well as that the twelve year period had not lapsed. Besides, the defendants submitted that the fact that the land was vacant did not infer they were dispossessed. That they have always been in use and occupation of the land. The defendants also submitted that the plaintiffs lack locus to bring the suit. Basing their submissions on the case law cited, they urged the Court to dismiss the plaintiffs' suit with costs.

32. It is now a settled principle of law that for a claim of adverse possession to succeed, the applicants must show that:

(i) Their occupation is adverse to the use to which the registered user intended the land for.

(ii) The possession must be for a period of not less than twelve years.

(iii) The possession must be without the consent of the owner of the land.

33. In this case, there are 19 applicants. During the trial, it came out that some of the plaintiffs were deceased. One of the deceased was the 8th plaintiff. His claim was pursued by Kuri Bembeu who testified as the legal representative. Mr Kuri said that Peter Kuri (deceased) died in 2009 before the commencement of the suit. The inclusion of Peter Kuri's name as a plaintiff before the appointment of the administrator of his estate was thus irregular and unprocedural. The suit by the 8th plaintiff was thus null and void and the appointment of an administrator in 2018 could not cure the nullity. On account that the suit was brought by a deceased person means there was no suit to be proved. Consequently the 8th plaintiff's claim is hereby struck out.

34. The 19th plaintiff did not give oral evidence to support his claim. The representative said because the 19th plaintiff was not mentally fit he could not testify. However the representative did not properly move the Court to enable her appointment as next friend and be able to testify on his behalf. The claim for adverse possession must be specifically proved in terms of when the person took occupation and how he/she is continually using the land that is contrary to the purposes for which the land owner intended to use it for. In the absence of such evidence, the Court cannot presume whether the 19th plaintiff was indeed in occupation (in favour of the 19th plaintiff) and whether the time period had matured. For this reason, the Court finds that the claim by the 19th plaintiff has not been proved at all. The same is also dismissed.

35. During the Court visit, the Judge confirmed that only the 2nd, 3rd, 10th, 12th, 13th, 14th, 17th and 18th defendants had structures on the land. The 1st, 4th, 5th, 6th, 7th, 8th, 9th, 11th, 15th, 16th, and 19th plaintiffs were not living on the land. These plaintiffs with exception of 19th plaintiff who did not testify confirmed during their oral testimony that they were not living on the suit land. The 1st, 4th – 9th, 11th, 15th, and 16th plaintiffs stated that they are using the land for farming. PW 1 opened his evidence in chief thus, *"All the 19 applicants reside on the plot. That I personally reside on 6 acres. I have been residing on the suit plot since 1977. I was born on the suit parcel."*

36. Yet it turns out that the 1st plaintiff does not live on the land. He confirmed to the Court during the site visit that he was only using the suit parcel for farming. The 7th plaintiff who testified as PW 6 also said in his evidence in chief that he was born on the suit land. Yet during cross – examination he said he lived on a separate piece of land and only used the portion of the suit land he was claiming for cultivation. Further PW 6 in cross – examination said he found coconut trees planted by his parents. PW 6 was claiming the land because it belonged to his father. The evidence of PW 1 and PW 6 clearly show parties who are not truthful to the Court i.e. saying they live on the land while it is not true. They are also claiming the land by virtue of inheritance not by virtue of their occupation. The land was never registered in their parents' names so the right of inheritance could not accrue. In any event this suit was not commenced by their said parents to have the right to be pursued. I am not satisfied on their proof of occupation of the suit property.

37. The 6th plaintiff testified as PW 8. He also stated that he has lived on the suit land since he was born in 1970. That he lives on the land with his family. However he could not tell the size of his land. The question then arises; if the 6th plaintiff does not have a house on the

land, how is he residing on it with his family? This plaintiff also said he was given this land by his parents. Later in cross – examination, PW 8 says he does not live on the land but only farms it. He also admitted there could be a mistake in his photographs filed as they looked similar to those filed by his brother Mwandzaya Karume (7th plaintiff). With such glaring contradiction can the applicant state he has proved his case? I think otherwise and make a negative finding in his favour.

38. The 5th plaintiff equally said the land was left to him by his father (inheritance) when he was born, he found the slaughter house on the land. The 5th plaintiff stated he works as a turn boy which work he admitted involves frequent travels. That when he gets time, he visits the land. His father is still alive but he did not call him to corroborate this evidence that indeed his father gave him the portion he is cultivating. The cultivation/farming story appears to have been adopted by all the plaintiffs not living on the suit land.

39. Secondly none of these plaintiffs explained how their cultivation dispossessed the defendants of the intention they would put the land to use i.e. in operating slaughter house and grazing the cattle as they awaited to be slaughtered. This line of their evidence in my view corroborates the evidence of the defendants that the operations at the slaughter have been dormant for a while and that some of the plaintiffs would farm crops and carry them away.

40 Now in relation to the evidence of the 2nd, 3rd, 10th, 12th, 13th, 14th, 17th and 18th plaintiffs who have structures on the land. The 13th plaintiff said he has lived on the land since he was born in 1955. He did not tell this Court when he built his house on it noting that he could not have built a house immediately at birth. What is interesting why I doubt his stay on the land is that unlike most of the plaintiffs who have testified to having been born finding the slaughter house on the land, Mr Mwangola Tsuma in his evidence stated the slaughter house had only been there for two (2) years. From the evidence of his co-plaintiffs, it is apparent the defendants' father purchased the land already developed with a slaughter house. So which land was this 13th plaintiff living on that had a slaughter house built only in the last two years? Further he is claiming 8.82 acres but did also not justify how he knew his portion was measuring 8.82 acres. In my view it is not enough just to drop the size claimed without giving reasons how he knew the size and what he is utilising the entire portion claimed for.

41. The 10th and 18th plaintiffs all stated they have lived on the land since birth. The 10th plaintiff gave the names of his children born on diverse years from 1967 to 1996 and grandchildren. He claims the land through ancestry having inherited the same from his father. The 10th plaintiff is claiming 4 acres where he lives and farms. This plaintiff's father worked for Waterbell who sold the land to the defendants' father. Although this plaintiff did not bring up the suit on behalf of his grown up children, he has shown that he has been on the suit land utilizing it and living on it. I am therefore satisfied that he has proved that he is entitled to the 4 acres he is in occupation of (together with his wives and children) by virtue of adverse possession. Consequently I shall allow his claim.

43. The 18th plaintiff also satisfied me that he has been on the suit land for over 12 years. He was truthful to say that because he is illiterate, he could not state the size he was occupying. He chose not to use guess work. Consequently I shall allow his claim for the portion measuring 8 acres.

44. The 17th plaintiff testified as PW 2. In his evidence in chief, he stated that he lived on the suit land. During cross – examination he said that he lived partly in Changamwe. The 17th plaintiff's evidence was full of contradictions. At one time, he said he only knew the defendants were the registered owners of the suit land in 2009 when they came with the area Chief. Another time, he states he knew the defendants' father because he had a slaughter house bought from a white man. This witness also said the 1st plaintiff had a home on this land which fact he knew not to be true. He could also not remember when he built his house on the suit land. During the time the Court visited the site, he did not know the size of land he was claiming. He is relying on the sizes picked by the surveyor (PW 17). In his witness statement dated 21st April 2016, he said he lives on the land with his 4 brothers and their mother. The 17th applicant has not brought the claim as a representative suit. It is not clear the 17th plaintiff's claim as to which portion of the 11.82 acres as given in the survey report is his and which size belong to his siblings. The upshot of this is I am not satisfied that this witness established his claim in terms of when he started using the land and what size. The portion assigned to him by the surveyor refers to 11.82 acres which contradicts his own statement of 4 acres. I therefore dismiss his claim for not having been proved.

45. The 14th plaintiff was deceased at the time this suit was heard. He was substituted by his wife Tata Mwamta Ngale. She was claiming 4 acres of the suit land. She stated that she was married and lived on the suit land where she brought up all her children. Mrs Ngale stated that her eldest son is now 30 years old. She is one of the persons their houses were shown to the Court during the site visit. Even the defence counsel did not question her occupation of the suit land. This Court finds her evidence uncontroverted. The result of which is that her claim is granted in terms of the 4 acres claimed. Similar position applies in respect of the 2nd plaintiff.

46. The 3rd plaintiff did not give oral testimony before Court. No explanation was given to the Court. He therefore did not prove the facts pleaded in regard to his claim. PW 2 said he was (an employee of the defendants). The Court makes an inference that his occupation cannot be said to be adverse to that of the defendants. His suit is hereby dismissed for lack of evidence.

47. Having analysed the totality of the evidence adduced in support of the plaintiffs' pleadings together with case law cited, the suit partially succeeds in favour of the 2nd, 10th, 14th and 18th plaintiffs. I enter judgement in the favour of 2nd, 10th, 14th & 18th plaintiffs that they are entitled to their portions by way of adverse possession i.e.

2nd plaintiff – 10 acres

10th plaintiff – 4 acres

14th plaintiff – 4 acres

18th plaintiff – 8 acres

The claim by the 1st, 3rd – 9th, 11th, 12th, 13th – 17th and 19th plaintiffs are dismissed having not been proved to the required standards. They shall pay the 1st and 2nd defendants costs of the suit.

Dated, signed & delivered at Mombasa this 15th February 2019

A. OMOLLO

JUDGE