



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC CASE NO. 256 OF 2013

SAMSON KAVOI & 53 OTHERS.....PLAINTIFFS

VERSUS

AFRICA BEL-AIR ENTERPRISES COMPANY LTDDEFENDANT

JUDGEMENT

1. The 54 plaintiffs vide an Originating Summons dated 11th November 2013 brought this suit against the defendants seeking judgment to be entered in their favour in the following terms;

(a) The defendant is the registered owner of the piece of land known as Land Reference No. MN/VI/1042, Mombasa (herein called “the suit property”).

(b) The plaintiffs have occupied the suit property for more than 12 years.

(c) The Plaintiffs’ occupation of the suit property has been actual, open, exclusive, and continuous for the said period of at least 12 years.

(d) The plaintiff’s occupation of the suit properly has been peaceful and without permission or licence of the defendant or predecessor(s) in title.

(e) It is just and equitable in the circumstances of this matter that the plaintiff’s application seeking adverse possession be allowed.

2. The Originating Summons is supported by the grounds set on its face inter alia that;

(i) The defendant is the registered owner of the Suitland L.R NO. MN/VI/1042 which the plaintiffs have occupied for a period of more than 12 years.

(ii) That the plaintiffs’ occupation has been open, exclusive and uninterrupted. The summons is accompanied by the affidavit deposed to by Samson Kavoi, the 1st plaintiff. The plaintiffs annexed photographs of their houses together with a copy of the title deed to confirm the defendant is the registered owner.

3. The defendant was served by advertisement through a publication placed in the Star Newspaper of 9th December 2015 after the validity of the summons were extended pursuant to an application dated 15th May 2015. The defendant did not enter appear or file a defence within the prescribed period or at all. The suit thus proceeded undefended.

4. The 1st plaintiff gave evidence on behalf of his co-plaintiffs on 22nd November 2018. Mr. Kavoi told court that they have lived on the suit plot peacefully since 1995. That they have constructed permanent houses and no none has ever come to remove them. Mr Kavoi in his affidavit deposed that sometimes in October 2013, a guard from Nite force Company Ltd served them with a letter dated 8th October 2013 claiming that he had been appointed by the defendant to manage the property. That it is upon receipt of this letter that they learnt the defendant was the owner of the suit property.

5. In their written submissions, the plaintiffs stated that they have met the criteria for granting adverse possessions claim as provided under Section 38 of the Limitations of Actions Act by virtue of having lived on the land openly and peacefully for a period of over 12 years. The plaintiffs supported their submissions by the decisions of **Rajab Nandwa Akida & Another versus Patricia Mary Davidson (2018)**

eKLR. They urged the court to allow their claim.

6. I have analysed the evidence presented by the plaintiffs. They have established that they live on the suit property by producing photographs of their houses and the defendant's agent letter dated 8th October 2013 served upon them. In the said letter, the agent referred to them as tenants. The defendant did not adduce any evidence that have contrasted the plaintiffs' claim that they occupy the land without permission of the defendant.

7. In the case of **Mate Gitabi Vs Jane Kabubu Muga & 3 Others (2017) eKLR**, it was held that "For one to succeed in a claim for adverse possession, one must prove and demonstrate that he has occupied the land openly" that is without licence or permission of the land owner with the intention to have the land. There must be an apparent dispossession of the land from the land owner (Similar holding in **Kasuve Vs Mwaani Investments Ltd & 4 Others (2004) IKLR**).

8. I am therefore satisfied that the plaintiffs have proved their case. In the certificate of title presented to the court, entry no 23 confirms the defendant as the owner. Entry no 24 shows the property was changed to permanent Universal Bank on 10th October 2013 for a sum of Kenya shillings Fifty Million (Kshs50,000,000/=). The plaintiffs did not join the bank in these proceedings.

9. Consequently I will allow the plaintiffs claim subject to the interest of the bank. Hence the registration of the plaintiffs as proprietors of the property L.R. MN/VI/1042 is subject to them is subject to their offsetting the liability due to Paramount Universal Bank Ltd.

The costs are ordered in the cause.

DATED, SIGNED and DELIVERED at Mombasa this 14th day of June 2019.

A. OMOLLO

JUDGE.