



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC (O.S) CASE NO. 33 OF 2019

PAMELA MULO.....APPLICANT

VERSUS

OLIVER OTIENO ARIKA.....1ST RESPONDENT

LUCAS NYAMILA OWITI.....2ND RESPONDENT

RULING

1. Pamela Mulo, hereinafter referred to as the applicant has come to court by way Originating Summons against Oliver Otieno Arika and Lucas Nyamila Owiti for determination of the following issues:

- a. Are OLIVER OTIENO ARIKA AND LUCAS NYAMILA OWITI, the registered proprietors of the land parcel known as LR. NO. SOUTH SAKWA/BAR KOWINO/9206?**
- b. Has the Applicant been in actual, factual, active possession and in physical occupation of the said parcel to date?**
- c. Has the said occupation and possession been peaceful, uninterrupted and has the same been known to or by the Respondents and the previous registered owner?**
- d. What is the cumulative and or total period or duration of such occupation to date?**
- e. Was the entry or ingress into the said parcel of land without the permission, let and or at the instance of the Respondents and/or the previous registered owner?**
- f. Has the Applicant fulfilled all and singular the requirements for a declaration for the extinction of the registered proprietor's interest in the said parcels of land and the registration of the same in their favour by virtue of the doctrine of adverse possession?**
- g. Should a declaration be made that the ownership and proprietary rights and interests of the registered owners, OLIVER OTIENO ARIKA AND LUCAS NYAMILA OWITI be and are hereby extinguished as they hold the suit parcel in trust for the Applicant.**

2. The applicant has filed a notice of motion dated 17/9/2019 praying for orders that the Honorable court be pleased to withdraw and Transfer BONDO ELC NO. 35 OF 2019 from Bondo Principal Magistrates Court to the Environment and Land Court at Kisumu for hearing and determination and/or for the making of further orders in conjunction to or together with KISUMU ELC (OS) No. 33 of 2019.

3. The application is based on grounds that the applicant claims adverse possession and therefore it is necessary to move this court to stay proceedings in ELC No. 33 of 2019.

4. In the replying affidavit, Oliver Otieno Arika states that the applicant has occupied the parcel of land since 2014. Moreover, that the respondent are the registered owner of parcel of land South Sakwa/Barkowin/9206. The respondent was informed by Mr. Gori Apiyo Gori who sold them the land as he was the one staying on the land and moved out in 2002.

5. I have considered the application, rival submissions and do find that there is no doubt that the applicant is in possession of the sit parcel of land. It is not clear how long he has been in possession.

6. The applicant states that she has been in occupation since 1990 while the respondent states that she has been in possession since 2014. Though it is not clear as to who is saying the truth, the respondent rely on hearsay from Suri Apiyo Suri.

7. Before me is a claim based on adverse possession. This court cannot transfer the matter to lower court as the lower court has no jurisdiction. Likewise, a defence of adverse possession cannot be filed in the lower court.

8. I do find merit in the application by the applicant and do grant orders for the Transfer of BONDO ELC NO. 35 OF 2019 from Bondo Principal Magistrates Court to the Environment and Land Court at Kisumu for hearing and determination and/or for the making of further orders in conjunction to or together with KISUMU ELC (OS) No. 33 of 2019.. No orders as to costs. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 26TH DAY OF SEPTEMBER 2019.

In the presence of:

Applicant M/s Oondi

Respondents Odhiambo

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE