



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 12 OF 2017 (O.S)

IN THE MATTER OF LAND PARCEL NO. KABONDO/KASEWE/1017

AND

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF ORDER 37 RULE 7 (1) OF THE CIVIL PROCEDURE RULES

BETWEEN

BENTA AOKO ATELA.....PLAINTIFF

VERSUS

BREMARO ODHIAMBO OWINO.....DEFENDANT

JUDGMENT

1. Benta Aoko Atela, (hereinafter referred to as the Plaintiff) has come to this court against Bremaro Odhiambo Owino by way of Originating Summons seeking orders that she be declared to have acquired prescriptive rights over parcel of land number **KABONDO/KASEWE/1017** measuring 2.0 HA by way of adverse possession. She prays that the respondents do sign transfer and consent to transfer forms in favour of the applicant, failing which the registrar of the high court be mandated to sign them. That the costs of this suit be borne by the respondent.
2. The application is based on the grounds and facts in the affidavit that the plaintiff is the wife of the late Julius Atela Nyakaka who died in the year 2002 and left her residing on land parcel no. **KABONDO/KASEWE/1017** with her 6 children, 3 sons and 3 daughters.
3. Moreover, that the Plaintiff has stayed in the land for all the lifetime of her children for a period of more than 57 years.
4. The late **Julius Atela Nyakaka** was buried on the said land parcel **no. KOBONDO/KASEWE/1017**.
5. Upon conducting a search, the plaintiff has realized that the land parcel is registered in the name of the respondent.
6. The defendant has got his separate ancestral land at Kendu Bay and the suit parcel of land is their ancestral land.
7. The Defendant has got no blood relationship with her husband.
8. The Plaintiff has had exclusive and uninterrupted use of the suit parcel of land.
9. The Plaintiff's use of the suit parcel of land has been open, without secrecy and without any interruption and/or resistance during the entire period of more than 57 years.
10. Since the Plaintiff was married; the defendant has never used the suit parcel of land for any purposes and has been dispossessed by the plaintiff during the entire time.
11. The registration of the defendant was due to a mistake on the part of the registry during the process of adjudication and/or fraudulent clandestine moves by the defendant.

12. The defendant was served with summons but failed to appear.

13. When the matter came for hearing, the plaintiff testified that she is in possession of the suit land and has been in possession for more than 57 years. Since she was married, the defendant has never used the land. Her husband was buried in the land. She has lived in the land with her children.

14. The Plaintiff's evidence was not contravened. I do find that the Plaintiff has established that she is in adverse possession of the suit property and therefore has acquired prospective rights. I do grant the following declarations:

a) The applicants be and is hereby declared to have acquired prescriptive rights over parcel of land number KABONDO/KASEWE/1017 measuring 2.0 HA by way of adverse possession.

b) The respondents do sign transfer and consent to transfer forms in favour of the applicant, failing which the registrar of the high court to sign them.

c) The costs of this suit be borne by the respondent.

Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 25TH DAY OF OCTOBER, 2019.

In the presence of:

Mr. Juma for Plaintiff

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE