



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MIGORI

ELC CASE NO. 243 OF 2017 (O.S)

(Formerly Kisii Elcc no. 332 of 2016 (O.S))

BONIFACE ABONGO ONYUNA alias APONGO ONYUNA.....PLAINTIFF

VERSUS

JANE ATIENO ORIMBA.....1ST DEFENDANT

DICKSON MBAI ORIMBA.....2ND RESPONDENT

JUDGMENT

1. By an originating summons dated 12th October 2016 and filed in court on 14th October 2016, the plaintiff, Boniface Abongo Onyuna alias Apongo Onyuna through G.S. Okoth and Company Advocates is claiming adverse possession in respect of LR. NO. LABWE EAST/68 registered in the name of Nathaniel Orimba Chwanya. He is seeking determination of questions 1 to 8 set out its face namely:-

a) Whether land parcel No. Lambwe East/68 now registered in the name of Nathaniel Orimba Chwanya is part of the settlement land parcel contained in the plot card for Lambwe Settlement Scheme or not?

b) Whether the allottee, Aloice Onyuna Otigo, sold to or gave the said land to Nathaniel Orimba Chwanya or not? And if so then whether any documentary proof of such contractual relationship exists?

c) Whether the family land and kinsmen of Aloice Onyuna Otigo have occupied, possessed or resolved on the suit land parcel No. Lambwe East/68? and is so for how long have they occupied the same?

d) Whether the registered proprietor, Nathaniel Orimba Chwanya or any of his kinsmen have ever occupied, cultivated or used the suit land in any way?

e) Whether the registration of Nathaniel Orimba Chwanya as proprietor of the suit land was done fraudulently or openly and had he asserted his right of ownership over the said land at all?

f) If the answer to 3 above is positive, whether the said occupation and possession has been peaceful, continuous, uninterrupted and open for a period of more than 12 years or not.

g) Whether the estate of Aloice Onyuna Otigo or any of his Kinsmen occupying the suit land have acquired title to the suit land by way of adverse possession?

h) Who is to bear the costs of this suit?

2. The Originating summons is premised on the plaintiff's affidavit sworn on even date. It is also based on documents marked as "BAO 1 and BAO-2A as well as "BAO-2B", (PExhibits 1A, 2A and 2B respectively).

3. The 1st respondent, Jane Atieno Orimba who appears in person filed her replying affidavit sworn on 28/11/2016. Essentially, her said response is an absolute admission of the plaintiff's claim.

4. The 2nd defendant Dickson Mbai Orimba did not respond to the plaintiff's claim.

5. I note issues 1 to 8 set out on the face of the originating summons. I embrace the them accordingly; see Great **Lakes Transport Company (U) Ltd –vs- Kenya Revenue Authority (2009) KLR 720.**

6. The plaintiff and the 1st defendant relied on their respective pleadings. I take into account the same.

7. I find that the plaintiff's claim is not controverted. It is merited and proved against the defendants to the requisite standard ; see **Wilson Kazungu Katana and 101 others –vs- Salim Abdalla Bakshwein and another (2015) eKLR.**

8. Accordingly, I enter judgment for the plaintiff against the defendants jointly and severally thus;-

a) A declaration that the plaintiff and his Kinsmen, particularly all the children of the deceased, Aloice Onyuna Otigo have acquired the suit land LR NO. Labwe East/68 by way of adverse possession.

b) The suit land be registered in the name of the plaintiff, Boniface Abongo Onyuna alias Apongo Onyuna in lieu of Nathaniel Orimba Chwenya to hold the same in trust for himself and his kinsmen, particularly all the children of the deceased, Aloice Onyuna Otigo.

c) The Deputy Registrar of this court shall execute transfer documents of the suit land as per order number (b) hereinabove.

d) The Land Registrar, in charge of Homa-Bay County shall enter the plaintiff's name in the register accordingly.

e) No orders as to costs.

It is so ordered.

DELIVERED, SIGNED and DATED in open court at MIGORI this 17th day of OCTOBER 2019.

G. M. A. ONGONDO

JUDGE

In the presence of:

Mr. G.S. Okoth learned counsel for the plaintiff

1st defendant in person

Tom Maurice – Court Assistant