



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE (O.S) NO. 40 OF 2014

IN THE MATTER OF LAND PARCEL NO. KISUMU/WANGAYA 1/5776

AND

IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTION ACT CAP 22 LAWS OF KENYA

AND

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

BETWEEN

ISACK OKWANY OWANO.....PLAINTIFF

VERSUS

NANCY ATIENO ODHIAMBO.....DEFENDANT

JUDGEMENT

Isack Okwany Owano (hereinafter referred to as the Plaintiff) as come to court for a declaration that the Defendant rights to recover the land known as LR NO. KISUMU/WANGAYA/5776, measuring 0.53 Ha is barred under the Limitations of actions Act, Chapter 22, Laws of Kenya and her Title thereto extinguished on the grounds that the Plaintiff has openly peacefully and continuously been in occupation and possession of the aforesaid portion of land for a period exceeding 12 years.

He prays for an Order that the Plaintiff be registered as the proprietor of LR NO. KISUMU/WANGAYA/5776, in place of the Defendant and there be an Order restraining the Defendant either by herself, agents, servants and/or employees from interfering with the Plaintiff's peaceful possession and occupation of LR NO. KISUMU/WANGAYA/5776, in any manner whatsoever and/or howsoever. Costs of this originating summons be borne by the Defendant.

The Plaintiff filed a supporting affidavit stating that all that parcel of land known as LR NO. KISUMU/WANGAYA/5776 is currently registered in the name of NANCY ATIENO ODHIAMBO, the Defendant herein as per copy of the extract from the register. *He* started using the said parcel from 1995. Previously, his father entered into a sale agreement for the purchase of the parcel from the then owner Obudho Kiriko in 1978 before land adjudication and registration and that at the time of adjudication, the parcel was registered in the name of Obudho Kiriko and not his father's name notwithstanding the fact that his father had already purchased the land and was in possession.

That in as much as his family knew that the suit parcel now belonged to his father, those rights were extinguished by the registration of Obudho Kiriko as the proprietor.

None the less Obudho Kiriko and or his relatives did not terminate the plaintiff's father's use of the land and in 1995 the plaintiff took possession of the suit land which he has been using to cultivate maize and sugar cane.

His said occupation and possession has been and is still peaceful and uninterrupted for the period which now amounts to 22 years.

Therefore, time started to run in from 1995 and continues to run as against the Defendant who is the current registered owner and Administratrix of the estate of OBUDHO KIRIKO.

Given the fact that the adjudication was in 1984, the extract of the register does not bear the correct entry as Obudho Kiriko became the registered owner of the suit parcel in 1984 and not 2003.

states that he has fulfilled all and singular the requirements for a declaration for the extinction of the registered proprietor's interest in the said parcel of land and the registration of the same in my favour by virtue of the doctrine of adverse possession.

The Plaintiff claims that he is in adverse possession of the suit property and seeks orders that he be registered as proprietor. The defendant filed a notice of appointment of advocate but did not file any reply. When the matter came up for hearing, the Plaintiff relied on his statement which was adopted as the evidence in chief.

I have considered the evidence on record and do find that the Plaintiff is in possession of the suit property registered in the names of the defendant. The Plaintiff has been in possession from a period of more than 12 years. There has been no interruption and the possession has been exclusive with the knowledge of the defendant.

I do find that the Plaintiff has proved on a balance of probability that he is in adverse possession and therefore has acquired prescriptive rights. I do make the following orders.

1. A declaration that the Defendant rights to recover the land known as LR NO. KISUMU/WANGAYA/5776, measuring 0.53 Ha is barred under the Limitations of actions Act, Chapter 22, Laws of Kenya and her Title thereto extinguished on the grounds that the Plaintiff has openly peacefully and continuously been in occupation and possession of the aforesaid portion of land for a period exceeding 12 years.

2. I do order that the Plaintiff be registered as the proprietor of LR NO. KISUMU/WANGAYA/5776, in place of the Defendant.

3. I do further grant an Order restraining the Defendant either by herself, agents, servants and/or employees from interfering with the Plaintiff's peaceful possession and occupation of LR NO. KISUMU/WANGAYA/5776, in any manner whatsoever and/or howsoever.

4. Costs of this originating summons be borne by the Defendant.

Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 15th DAY OF NOVEMBER, 2019.

In the presence of:

Mr Ariho for plaintiff

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A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE