



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CIVIL SUIT NO. 373 OF 2017 (OS)**

**ALFAN MZEE ALFANI ALFANI.....APPLICANT**

**-VERSUS-**

**LEVI KARANI.....RESPONDENT**

**JUDGEMENT**

1. The plaintiff started this suit by way of the originating summons dated 13.10.2017 asking the Court to grant the following orders:
  1. That this summons be served on LEVI KARANI by affixing a copy thereof on the Court notice board in the Court house or by advertisement once in the Daily Newspaper.
  2. That the Respondent's interest in Plot Title No. C. R 7172/294 Subdivision No. 699/III/MN measuring 0.7800 H.a has been extinguished.
  3. That the Registrar of Titles, Mombasa to delete entry in favour of the Respondent in the title of the land described in paragraph 2 above or register appropriate discharge in respect thereof.
  4. That the Applicant be registered as the proprietor of all that parcel of land Plot Title No. C.R 7172/294 Subdivision No. 699/III/MN measuring 0.7800 H.a which said piece of land is comprised in a Certificate of Title registered in the Land Titles Registry at Mombasa in place of LEVI KARANI reason of the fact that the Applicant has become entitled to the said land by adverse possession.
  5. That the Registrar of titles, Mombasa do issue certificate of title for the parcel of land Plot Title No. C.R 7172/294 Subdivision No. 699/III/MN measuring 0.7800 which said piece of land is comprised in a Certificate of Title registered in the Land Titles Registry at Mombasa in the name of the Applicant.
  6. That the orders referred to in paragraph 2, 3, 4 and 5 above be registered against the title Plot Title No. C.R 7172/294 Subdivision No. 699/III/MN measuring 0.7800 H.a which said piece of land is comprised in a Certificate of Title registered in the Land Titles Registry at Mombasa in terms of Section 38 (2) of the Limitation of Actions Act, (CAP 22) Laws of Kenya.
  7. That the costs of this Originating Summons be provided for.
2. The summons was served on the defendant by way of advertisement placed in the standard newspaper on 15<sup>th</sup> February 2018 pursuant to leave of the Court granted on 21<sup>st</sup> November 2017.
3. The defendant in spite of being served did not enter appearance. The case was therefore listed for hearing on 10<sup>th</sup> July 2018. On 10<sup>th</sup> July 2018, the plaintiff testified and told Court that he has lived on the land for over 30 years without any issues. That he has been living on the land together with his family which includes his married son. He produced a copy of the certificate of title for the suit property as part of his evidence and asked the Court to allow his claim.
4. The claim is for adverse possession. The copy of certificate of title produced show the suit land was registered in the name of the defendant on 23<sup>rd</sup> March 1989. The uncontested evidence of the plaintiff is that he has lived on the land with his family for more than 30 years. The inference drawn is that he has dispossessed the registered owner the use and purpose for which he may have intended to put the land to. The interests of the registered owner have thus been extinguished by operation of section 17 of the Limitation of Actions Act.

5. Consequently I am satisfied that the plaintiff has proved his case as against Levi Karani and grant him the following orders in his Originating Summons only if the title is still bearing the names of Levi Karani sued as the defendant.

- 1. That the Respondent Levi Karani's interest in title No CR 7172/294 Subdivision No 699/III/MN has been extinguished.**
- 2. That the Applicant Alfani Mzee Alfani be registered as owner of the suit land Subdivision No 699/III/MN in place of Levi Karani by virtue of the fact that the Applicant has acquired interests adverse to those of Levi Karani sued as the Respondent.**
- 3. The Registrar of titles Mombasa upon registering the Applicant in place of Levi Karani to proceed and issue him (Alfani Mzee Alfani) with a certificate of title in respect of C. R 7172/294 Sub-division No 699/III/MN measuring 0.7800 ha.**
- 4. The costs of the summons be borne by the plaintiff.**

**Dated, signed & delivered at Mombasa this 17<sup>th</sup> October 2018**

**A. OMOLLO**

**JUDGE**