



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 108 OF 2018(O.S.)

KENNETH KIPRONO LAGAT.....PLAINTIFF

VERSUS

1. OMAR AHMED EBRAHIM NOORANI

2. MOHAMED EBRAHIM NOORANI.....DEFENDANTS

JUDGMENT

1. Kenneth Kiprono Lagat, the Plaintiff took out an originating summons against the defendants claiming to be entitled to ownership of the **PLOT NO.MOMBASA/BLOCK XX/306** by virtue of adverse possession. In the originating summons dated 11th May, 2018, the Plaintiff wants the court to determine the following questions: -

- 1. Are the defendants the registered proprietors of PLOT NO. MOMBASA/BLOCK XX/306?**
- 2. Has the plaintiff been in possession since 1990 of the property known as PLOT NO. MOMBASA/BLOCK XX/306?**
- 3. If so, has the said possession of the plaintiff been quiet, continuous and adverse to the titles of the defendants?**
- 4. If so, should the Land Registrar Mombasa District be ordered to have the Plaintiff Kenneth Kiprono Lagat be registered as the absolute proprietor of the property known as PLOT NO. MOMBASA/BLOCK XX/306 free from all other encumbrances?**
- 5. What orders as to costs?**
- 6. Are there any further or other reliefs the court may deem just?**

2. The originating summons is supported by the affidavit of Kenneth Kiprono Lagat, the Plaintiff, sworn on 11th May, 2018. The Plaintiff's case is that he stays on **PLOT NO. MOMBASA/BLOCK XX/306** and that he has a residential house on the said plot. That he settled on the said plot with his family in 1990 and has lived thereon to date. That his occupation on the said property has been uninterrupted and since 1990, no one has requested him to vacate from the property, and indeed has used it from 1990 to date as his own property. That having been in continuous and uninterrupted occupation for over 28 years, he would like to have title for the suit property in his name. That the said property is registered in the names of Omar Ahmed Ebrahim Noorani as per the copy of title and search which have been annexed to the affidavit.

3. Pursuant to leave granted by the court on 22nd May 2018, the defendants were served through advertisement in the newspaper on 29th May, 2018. The defendants did not enter appearance within the stipulated time or at all. The defendants were also served with a hearing notice advertised in the newspaper on 16th July, 2016 but did not attend court. The case therefore proceeded ex-parte and the Plaintiff testified on 26th July, 2018.

4. PW1, Kenneth Kiprono Lagat reiterated the contents of the affidavit in support of the Originating Summons and adopted his witness/statement dated 11th May 2018. He stated that he is not a tenant in the suit property and never had permission of the owner for the 28 years he has lived on the suit property. He produced a copy of the title and search which showed that the property is registered in the Defendants' names. He urged the court to order that he be registered as the owner of the suit property.

The law on adverse possession is now well settled and the essential requirements that one has to meet in order to succeed in an application

for adverse possession have been discussed by the courts. In *Wambugu –vs- Njuguna (1983) KLR 173*, the court of Appeal held that adverse possession contemplates two concepts: possession and discontinuance of possession. It further held that the proper way of assessing proof of adverse possession would be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period, and not whether or not the claimant has proved that he or she has been in possession for the requisite number of years.

6. The requirements for adverse possession in Kenya has also been set out in the Case of *Mbira-vs- Gachuhi [2002] I EALR 13*, in which the court held:

“...a person who seeks to acquire title to land by the method of adverse possession for the applicable statutory period must prove non-permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutory prescribed period without interruption...”

7. Likewise, in *Jundu –vs- Kirplal & Another (1975) EA 225*, it was held:

“...to prove title by adverse possession, it is not sufficient to show that some acts of adverse possession must be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. It must be actual, visible, exclusive, open and notorious.”

8. The ingredients were recently discussed by the court of Appeal in the case of *Mtana Lewa –vs- Kahindi Ngala Mwangandi [2005] eKLR* where it was held that:

“Adverse possession is essentially a situation where a person takes possession of land, asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya 12 years.”

9. It is also a well settled principle that a party claiming adverse possession ought to prove that his possession was “*nec vi, nec clam, nec precario*,” that is, peaceful, open and continuous. The possession should not have been through force, not in secrecy and without the authority or permission of the owner.

10. This being a claim for adverse possession, the applicants must show that they have been in continuous possession of the land for 12 years or more; that such possession has been open and notorious to the knowledge of the owner and that they have asserted a hostile title to the owner of the property.

11. The plaintiff has stated that they have been in occupation of the suit property for a period of over 28 years which is a period of over 12 years. He also stated that he has been in occupation and possession of the suit property openly and continuously and without interruption for all that period. There was no evidence availed to contradict the plaintiff’s averments. The plaintiff produced a copy of the title confirming that the property is registered in the defendants’ names.

12. Considering the evidence availed in this case, and applying the legal principles as outlined above, it is clear that the plaintiff has proved his case on a balance of probability and has brought himself within the limits of the doctrine of adverse possession.

13. In the result, the suit by way of Amended originating summons dated 11th May 2018 and filed on the same date is allowed and I enter judgment as follows:

I. That the Plaintiff is entitled to be registered as the owner of PLOT NO. MOMBASA/BLOCK XX/306 and the Land Registrar Mombasa is hereby ordered to register him.

II. Because the defendants did not challenge or participate in these proceedings, I make no order as to costs.

DATED, DELIVERED and SIGNED at MOMBASA this 11TH day of October, 2018

C. YANO

JUDGE