

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 52 OF 2014 (OS)

SILAS SHIDA KALU & 21 OTHERS.....PLAINTIFFS

-VERSUS-

WILLIAM ERNEST RANDALE

SUSAN ELIZABETH RANDALE.....DEFENDANTS

JUDGEMENT

1. The plaintiffs sued the two defendants for a claim of adverse possession over property title No MSA 32/11/MN measuring 4.25 Acres. They have annexed a certificate of postal search as at 6th December 2013 showing the land is in the name of the two defendants as tenants in common.

2. The defendants were served by placing an advertisement on the daily nation newspaper of 17th March 2016 whose cutting was filed in Court on 7th June 2016 together with the affidavit of service of Agnes SidiKazungu. The defendants did not file an appearance within the stipulated period of 21 days from the date of the advertisement.

3. The plaintiffs in proving their case relied on the affidavit of TingaKaluJefa the second plaintiff. In this affidavit, Mr Jefa annexed a list of the occupants of the land stating the dates each entered the land. The last entrant was Amina ShidaKalu who signed that she entered the land in 1994. According to the deponent, all the plaintiffs have been on the land for over 12 years without the permission of the defendants. The plaintiffs also annexed photographs of their houses which he deposes are on this land and there has been no contrary evidence adduced.

4. Any party who comes to Court for an order of adverse possession only need satisfy the Court that:

i) They have been on the land for over 12 years uninterrupted without the consent of the land owner.

ii) That their occupation has dispossessed the land owner of the intention for which the land owner would have used the land.

5. In this case, it is clear the defendants have been dispossessed of their land and they have not made any attempts to recover the land from the plaintiffs. I am therefore satisfied that the plaintiffs have proved on a balance of probabilities as is required in law. Consequently I enter judgement in their favour in terms of prayer 1 & 2 of the Originating Summons by issuing an order that they be registered as joint owners of the suit land plot No 32/11/MN having acquired it by way of adverse possession. They shall bear the cost of their suit as the suit proceeded undefended.

Dated, signed & delivered at Mombasa this 28th day of April 2017.

A.OMOLLO

JUDGE