



Jackson Mwangombe Pugah and others v Abdulla Bin Ali (Environment and Land Case Civil Suit 196 (O.S.) of 2012) [2017] KEELC 3861 (KLR) (29 June 2017) (Judgment)

Jackson Mwangombe Pugah and others v Abdulla Bin Ali [2017] eKLR

Neutral citation: [2017] KEELC 3861 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE CIVIL SUIT 196 (O.S.) OF 2012**

AA OMOLLO, J

JUNE 29, 2017

BETWEEN

JACKSON MWANGOMBE PUGAH AND OTHERS APPLICANT

AND

ABDULLA BIN ALI RESPONDENT

JUDGMENT

1. The 29 plaintiffs brought this suit jointly against Abudalla Bin Ali by way of an Originating Summons dated 12th September 2012 seeking for orders that:
 1. Spent
 2. That the respondent's interest on title of all that piece of land situated in the Mombasa Municipality in the District containing by measurement one Decimal Eight Seven (1.87) acres or thereabout and being subdivision Number 3 of Section 11 Mainland North which said piece of land is comprised in a Certificate of Title dated the 6th October 1921 registered in the land title registry at Mombasa Number CR 1187/1 and is delineated, demarcated and described on the Land Survey Plan No.13282 and in entry number 9 on title has been extinguished.
 3. That the Applicants' Jackson Mwangome Pugah, Sammy Mwamlimu Sang, Kavumbin Kitsao Mbogo, Daniel Somba Kitheka, Crispin Salaita Manyongi, Mdzomba Charso Karisa, Emmmanuel Mwatsuma Kiti, Juma Murira Charo, Simon K. Tete, Nzai Kuhe Kalam, John Kidember Mwakurigha, Saha Mwinga, Mbwan Kalua, Josephine Mukaburi Mwakurgah, Rufas Njumwa Nganga, Johnson Masha Danien, Elius Mburau Mwachir, Doral Wokio Mwaurigha Alice W. Mangi, Zaituni Mghoi Mwajuma, Arnold Tusam Ngala, Martin Kimani Nganga, Charles Pala Kai, Haimisi Kombo Mwamure, Rodgers Mugangueni Mwanuye, Patrick Chonga Njuga, Margret Mkutano Mwamak, Daniel Nai Kambale, Katama Jira be



registered by their names and/or by the name of Makubaliano Self-help Group –junda as the proprietors of all that piece of land situated in the Mombasa Municipality in the Mombasa District containing by measurement one decimal Eight seven (1.87) acres or thereabout and being subdivision Number 2 of section 11 mainland North which said piece of land is comprised in a certificate of title dated the 6th October 1921 registered in the land titles registry at Mombasa as CR.1187/1 and is delineated, demarcated and described on the land survey plan no.13282 in place of Abdulla bin Ali by reason of the fact the applicants have become entitled to the said by adverse possession.

4. That the Registrar of titles Mombasa do issue certificate of title for the suit land described in 3 above in the names of the applicants and/or in the name of MAKUBALIANO SELF-HELP GROUP-JUNDA
 5. That the order referred to in paragraph 2,3 and 4 above be registered against the title to all the parcel of land known as plot number 3 section 11 mainland north in terms of section 38 (2) of the Limitation Actions Act, chapter 22, laws of Kenya.
 6. That the costs of this originating summons be provided for.
2. The Originating Submissions was served on the Respondent by leave of the court through an advertisement in the Daily Nation newspaper dated 25th May 2013 and Standard Newspaper of the same date. The Respondent did not enter appearance within the prescribed time or at all. The matter was therefore listed for formal proof. The 1st plaintiff gave evidence on his behalf and on behalf of all the plaintiffs on 20th December 2016.
 3. The 1st plaintiff called Mr. Jackson Mwangombe Pugah told court that he lives in Junda within Mombasa County. That they all have lived on the suitland together with their families for over 18 years. He said that when he came to this land, some of the plaintiffs were already living there. That the owner has never come to claim the land. They have used the land by having houses built on it. The witness said the land is about 8 acres and each plaintiff has his own portion. He urged the court to make an order that they be issued with a title deed.
 4. Together with their pleadings the plaintiffs annexed a copy of the title deed showing the last entry made on 17th October 1952 is a transfer in favour of the Respondent. The plaintiffs also annexed photographs of their houses. This evidenced adduced was not controverted. I am therefore satisfied that the plaintiffs have proved that they are in physical possession of the suit land which is owned by the Respondent. Further the 1st plaintiff stated that they have been on the land for over 18 years without interruption.
 5. The plaintiffs advocate filed written submissions putting reliance on the decision of WAMBUGU VS NJUGUNA (1983) KLR 173 where it was held that for an order to acquire land by statute of limitations the owner of the land must have lost his right to the land by either being dispossessed or having discontinued possession. Secondly that the plaintiff must show that he is in possession of the subject land by array of evidence.
 6. From the facts of this case, it is clear that the Respondent has been dispossessed of the use of his land by the plaintiffs. His rights have therefore been extinguished by the provisions of section 7 of the statute of limitation. Accordingly, I am satisfied that the plaintiffs have proved their case on a balance of probabilities. For this reason, I do hereby enter judgment in their favour as set out in prayers 2-5 of the plaint. The plaintiffs are at liberty to choose to have the suit land registered in their individual names or in the name of Makubaliano Self-help Group-junda. Since the suit was not defended I order the plaintiffs to bear their costs.



JUDGMENT DATED & SIGNED AT MOMBASA THIS 28TH OF JUNE 2017

A. OMOLLO

JUDGE

DELIVERED AT MOMBASA THIS 29TH DAY OF JUNE 2017 BY

C. YANO

JUDGE

