



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT NO 295 OF 2012(OS)

- 1. SALIM ISSA**
- 2. SHABAN MATANO MWAKEU**
- 3. BAKARI NGAO SHIBU**
- 4. SULEIMAN NZOLE SHANGA**
- 5. KASSIM OMAR AHMED.....PLAINTIFFS/APPLICANTS**

VERSUS

EBE MILANO.....RESPONDENT/DEFENDANT

JUDGEMENT

1. This is suit was commenced by way of Originating Summons dated 1ST November 2012. The Originating Summons is brought under Section 38 of the Limitation of Actions Act Order 37 of the Civil Procedure Rules 2010. The file plaintiffs seek orders against the defendants as follows;

i) THAT the plaintiffs herein Salim Issa, Shaban Matano Mwakeu, Bakari Ngao Shibil, Suleiman Nzole Shanga and Kassim Omar Ahmed be registered as absolute proprietors of the land comprised in all that parcel of land known as LAND REFERENCE NUMBER 39/SECTION II/MAINLAND NORTH instead of EBE MILAN for reason that the plaintiffs have since become entitled to ownership thereof by virtue of adverse possession and that costs of this suit be borne by the defendant.

2. The Originating Summons is supported by the affidavit dated 18th December 2012 jointly sworn by the plaintiffs.

3. The plaintiffs were unable to effect service of the Originating Summons upon the defendant as the defendant's whereabouts were unknown.

4. By a court order dated 3rd June 2013 the plaintiffs were allowed to serve the defendant by way of substituted service by advertisement of the daily Newspapers. The plaintiffs the effected service by advertisement in the Nation dated 22nd March 2014. Despite this advertisement the defendant neglected to enter appearance and/or file defence within the prescribed period.

5. On 3rd December 2014 the court directed that the originating summons be heard by way of adducing viva voce evidence. The matter was fixed for hearing. On the 6th April 2017 the matter proceeded for hearing.

6. The first plaintiff testified on behalf of all the plaintiffs. PW1 Salim Issa told the court that they have lived on the land since 1990. That since they started residing there no one has complained. That the five families reside on the land. He produced a copy of the title deed as exhibit-P1 and the certificate of official search as exhibit-P2. He further told the court that all the plaintiffs reside on that land with their families. They are also undertaking farming activities on the said land. They have constructed houses the produced the photographs as exhibit P3. He prays that they be declared as owners of the said land as they are entitled by virtue of adverse possession.

7. I have considered the plaintiffs case. Their case is uncontroverted. The plaintiffs' assertion is that they have lived on the land for over twelve (12) years. The issue for determination is whether the plaintiffs have acquired ownership through adverse possession. I have considered the submissions of the counsel for the plaintiff.

8. I have considered the principles governing the claim for adverse possession.

a) That the plaintiff must have clear possession of the property.

b) THAT the occupation of the land/property must be without the consent of the owners of the property.

c) THAT the occupation must be uninterrupted for a continuous period of more that twelve (12) years.

d) THAT the plaintiff must exhibit an extract copy of the title under litigation.

9. The plaintiff's facts as stated meet all the above conditions. The facts are undisputed. The plaintiff's counsel has put out the case of **PETER MBERI MICHUKI VERSUS SAMUEL MUGO MICHUKI CIVIL APPEAL NO.22 OF 2013** in which the court of appeal held that:

*"This court in **FRANCIS GICHARU KARIUKI VERSUS PETER MAINA CIVIL APPEAL NO.2930 OF 2002 (NAIROBI)** approved the decision of the High Court in the case of **KIMANI RUCHIRE VERSUS SWIFT RUTHERFORDS CO LTD (1980) KLR** where Kneller, J held The plaintiffs have to prove that they used this land which they claim as of right, nec vi, nec clam, nec precarious (no force, no secrecy, no persuasion) so the plaintiff must show that the company had knowledge (or the means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to attempt it by way of recurrent considered."*

10. I am fully guided by the above cited authorities I find that the plaintiffs have satisfied the conditions set out on their claim on adverse possession to succeed. I find that they are entitled to the prayers sought.

Accordingly judgment is entered for the plaintiffs as follows;

i. THAT the plaintiffs herein Salim Issa, Shaban Matano Mwakeu Bakari Ngao Shibil, Suleiman Nzole Shanga and Kassim Omar be registered as absolute proprietors of the land comprised in all that parcel of land known as land REFERENCE NUMBER 39/SECTION II/MAINLAND NORTH instead of Ebe Milano for reason that the plaintiffs have since become entitled to ownership thereof by virtue of adverse possession.

ii. The Registrar of lands do register the plaintiff as joint owners of land REFERENCE NUMBER 39/SECTION II/MAINLAND NORTH and certificates of title issues.

iii. No order as to costs.

Dated and signed on the 20th day of June 2017 at Mombasa.

L. KOMINGOI

JUDGE

20/6/17

Judgment dated and delivered in open court on the 20th day of June 2017 in the presence of Mr. Mokaya for the plaintiffs and the court assistant Koitamet.

L. KOMINGOI

JUDGE

20/6/17