



REPUBLIC OF KENYA

IN The ENVIRONMENT AND LAND COURT AT MIGORI

ELC NO. 13 OF 2017

MARK COLLINS & JAMES OMONDI OKOTH (SUING AS ADMINISTRATOR TO THE ESTATE

OF GEOFFREY OKOTH OYOYE – DECEASED.....APPLICANT/PLAINTIFF

VERSUS

INNOCENT OTIENO1ST DEFENDANT/RESPONDENT

JOSEPH OTIENO ODENGE.....2ND DEFENDANT/RESPONDENT

TOM ALA3RD DEFENDANT/RESPONDENT

ESTATE OF TITO ALA MWONA ALIAS MWONA TITO4TH DEFENDANT/RESPONDENT

RULING

1. By originating Notice of Motion dated 2/2/17, the plaintiff/applicant seeks the following orders;-

- a. A declaration that the defendants’ rights to cover the whole of **Title No. 305/W.NYOKAL/KANYIKELA** , is barred under the Limitation of actions Act Chapter 22 Laws of Kenya and his /there and/ or any title thereto extinguished on grounds that the plaintiffs herein have openly, peacefully and continuously been in occupation and possession of the aforesaid parcel of land for a period exceeding 12 years, from August 1986 running to the time as at the filing of the instant proceedings.*
- b. **There** be an order that the plaintiffs be registered as the proprietor of the whole of **TITLE No. 305/W. NYOKAL/KANYIKELA** in place of the defendants.*
- c. There be an order that the plaintiffs have by adverse possession acquired **Title No. 305/W. NYOKAL/KANYIKELA** immediately after the lapse of 12 years reckoned from August 1986.*
- d. There be an order restraining the defendants either by themselves, agents servants and or employees from interfering with the plaintiff’s peaceful possession and occupation of the said parcel of land that is **Title No. 305/W. NYOKAL/KANYIKELA**, in any manner whatsoever and or howsoever.*
- e. **Cost** of this originating Summons be borne by the defendants*

f. Such further and/or other orders be made as the court may deem fit and expedient, in the circumstances of this case.

2. The application was brought under Order 37 Rule 3 of the Civil Procedure Rules Section 1A, B & 3A of the Civil Procedure Act (Cap 21) Section 38 of the Limitation of Actions Act (Cap 22).

3. *The grounds of the Notice of Motion are supported by annexed documents. The grounds are thus:-*

a. That Plaintiffs and their family /siblings have been in occupation of Title No. 305/W.NYOKAL/KANYIKELA, hereinafter referred to as the suit land) has been open, continuous and without interruption for a duration of over 12 years and over.

b. The defendants' right to recover the parcel of land herein has been extinguished by efflux ion of time.

c. Consequently, none of the defendant has no right and or interests to transfer in the suit land.

d. Consequently, none of the defendant has no rights and or interests to transfer in the suit land.

e. The plaintiffs and their family/siblings has continuously, openly and without interruption occupied and has been farming or cultivating and planting trees on and carrying out subsistence farming the suit land without the interference by the defendants.

*f. The transfer of the suit land in the name of any of the defendants by way of transmission was void **ab initio**.*

g. The plaintiffs' occupation of the suit land has therefore been adverse to the defendants' proprietary rights.

h. The plaintiffs' have acquired prescriptive rights over the land parcel herein.

i. The plaintiffs' interest over the suit land merits registration.

j. Plaintiffs' rights and or interests, are vindicated vide section 28(h) of the land Registration Act (2012) Laws of Kenya.

4. *I have seen a Notice of discontinuance/withdrawal of entire suit dated 30/5/17 by counsel the plaintiff/applicants. The notice reads:-*

“The applicants main suit as well as the application for stay, dated 2nd February,2017 and 6th February,2017 which are pending before this Honourable Court been wholly withdrawn”.

5. *There is no objection to it by Mr. Kisera for the defendant/respondent. The counsel seeks costs of the suit.*

6. *Mr. Odero counsel instructed by Jaoko for the plaintiff/applicant, states otherwise.*

7. *It is the right of a litigant to withdraw a suit or an application, see Isaac Salat Vs. IEBC and 7 others (2014) eKLR and Order 25 of Civil Procedure Rules, 2010.*

8. *Costs follow the event and I am conscious of the Provision **to Section 27 Civil Procedure Act** and the decision in Rai Vs. Rai (2014) eKLR on costs. I, therefore, allow the notice with costs to the Defendants/Respondents.*

DELIVERED, SIGNED and DATED in open court at MIGORI this 20th day of July 2017.

G.M.A. ONGONDO

JUDGE

In the presence of :-

Mr. Kibera for Defendant/Respondents.

Mr.M. Odera for Plaintiff/Applicant

Tom – Court Assistant

G.M.A. ONGONDO

JUDGE