



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
LAND CASE NO. 241 OF 2016(O.S)

SAID KARAMA SALIM.....PLAINTIF

VERSUS

KOKAS M. NAKOLO.....DEFENDANT

JUDGMENT

1. By an Originating Summons dated 14th September 2016, the Plaintiff Said Karama Salim sought the determination of the following questions:-

- 1. Whether the Defendants are the registered proprietor of Plot No. Kilifi/Mtwapa/1050**
- 2. Whether the Plaintiff has been in possession of the property known as Kilifi/Mtwapa/1050 since the year 1986**
- 3. If so, whether the said possession has been quiet, continuous and adverse to the Title of the Defendant**
- 4. If so, whether the Land Registrar Kilifi District Land Registry should be ordered to have the plaintiff registered as the absolute proprietor of the property known as Kilifi/Mtwapa/1050 free from encumbrance and a new Title Deed be issued in the Plaintiff's favour without the necessity of the gazettment.**

2. Having failed to trace Kokas M. Nakolo, the Defendant herein for Service of the Summons, the Plaintiff filed a Notice of Motion application dated 23rd September 2016 seeking an order that the Originating Summons be served upon the Defendant by way of substituted service by advertisement in a local newspaper with nationwide circulation.

3. On the same day it was filed, the application was placed before the Honourable Justice Said Chitembwe who granted the Orders sought and required the Defendant to enter appearance within 15 days from the date of service by advertisement.

4. Subsequently Notice of the Originating Summons and the need for the Defendant to enter appearance as prescribed was placed in the Star Newspaper of Saturday/Sunday October 1-2, 2016. The Defendant neither entered appearance nor filed a defence.

5. The Defendant was again served through the same newspaper with a hearing notice published on its Saturday/Sunday June 17-18, 2017 edition and notifying the Defendant that the matter would proceed to hearing on 27th July 2017. The Defendant did not however appear nor did he produce any witnesses on the day scheduled for hearing.

6. Testifying on his own behalf, the Plaintiff told the Court that he has resided on Plot No. Kilifi/Mtwapa/1050 since 1986. It was his case that when he moved into the land which measures approximately 8 acres, he found it empty and he thereafter proceeded to build his residential home therein and he uses the rest of it for farming.

7. The Plaintiff further told the Court that his occupation of the property has been continuous, uninterrupted and peaceful ever since and he now wishes to have the Title Deed for the property registered in his name.

8. In support of his case, the Plaintiff produced in Court an original copy of a certificate of official research conducted on 7th September 2016 which shows that the property was registered in the name of Kokas Meshak Nakolo on 10th January 1995 when a Title Deed was issued in his name.

9. In addition, the Plaintiff produced a letter dated 20th November 1990 from the Kenya Power and Lighting Company Ltd showing he had on 27th November 1989 applied for the provision of 4 Kva Single Phase supply of electricity to his farm house on Plot No. 585(A) Kikambala. It was his case that this was the same suitland which is the subject matter of this suit. Further he produced receipts from the same Power Company indicating that on 9th November 1990, he paid Kshs 68,664/= to the Power Company being the “capital contribution towards the installation of electricity to the said Plot No 585 ‘A’ Kikambala.

10. It was therefore the Plaintiff’s prayer that having lived in the suitland for about 30 years he be given proper documentation to help him register as the owner of the land.

11. Adverse possession has been defined as a method of gaining legal title to real property by the actual, open, hostile and continuous possession of it to the exclusion of its true owner for the period prescribed by state law.

12. The period prescribed by the Limitation of Actions Act, Cap 22 of the Laws of Kenya for one to acquire legal title over land in Kenya by way of adverse possession is 12 years.

13. According to *Halsbury’s Laws of England, 4th Edition, Volume 28, Paragraph 768*, no right to recover land accrues unless the land is in the possession of some person in whose favour the period of limitation can run. What constitutes such possession is a question of fact and degree. Time begins to run when the true owner ceases to be in possession of his land.

14. To constitute dispossession, the acts must have been done which are inconsistent with the enjoyment of the soil by the person entitled for the purpose for which he had a right to use it, thus the term “adverse”.

15. In the matter before me, the Plaintiff has produced in evidence the official search certificate in respect of the suit property which shows that it was registered in the name of the Defendant on 10th January 1995. In addition, the Plaintiff has produced documents showing that he has been using the property since 1990. There is evidence to show that in November 1990, the Plaintiff paid a sum of Kshs 68,664/=, to Kenya Power and Lighting Company Ltd for the supply of electricity to his farm house on Plot No. 585‘A’ Kikambala. It is the Plaintiff’s case that this is the same plot as the suit property.

16. The Defendant did not enter appearance and/or file a Defence in these proceedings. The Plaintiff’s evidence and testimony before me therefore remains uncontroverted.

17. Having resided in the land openly for more than 20 years, I am satisfied and I do hold that the Plaintiff has proved his entitlement to the suitland by way of adverse possession.

18. Accordingly the Land Registrar Kilifi is hereby directed to forthwith have the Plaintiff registered as the absolute proprietor of all that property known as Kilifi/Mtwapa/1050 as prayed in the Originating Summons.

19. I make no orders to costs.

Dated, signed and delivered at Malindi this 6th day of December, 2017.

J.O. OLOLA

JUDGE