



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 207 OF 2013

SIKANY OLE LENGENY & 15 OTHERS.....PLAINTIFFS

VERSUS

JOHN SALA KOGULS.....DEFENDANT

JUDGMENT

(Suit by adverse possession; suit not defended; plaintiffs demonstrating that they have been on the suit property for over 12 years uninterrupted and in quiet possession; judgment entered for the plaintiffs)

1. This suit was commenced by way of an Originating Summons filed on 12 March 2012. The Originating Summons has been taken out pursuant to the provisions of Order 37 Rule 7 of the Civil Procedure Rules, and Section 38 of the Limitation of Actions Act, Cap 22, Laws of Kenya. These provisions allow a person to file an Originating Summons to claim land by way of adverse possession.
2. In this suit, it is the position of the applicants (whom I will refer to as plaintiffs) that they are entitled to the land parcel Narok/Cis Mara/Nkobon/147 (the suit property) by virtue of the doctrine of adverse possession. The plaintiffs are 16 in number and they authorized one Sikany Ole Lengeny, the 1st plaintiff, to swear the affidavit in support. In the affidavit, it is deposed that the suit property originally belonged to his father, one Loolbitiko Ole Lengeny. In the year 1985 one Samuel Soitame Ole Koriata, who was the then area Chief, convinced Loolbitiko to transfer to him 20 acres on the promise that he would assist him acquire a title deed. It is deposed that unknown to Loolbitiko, Ole Koriata went and registered himself as proprietor of the land of the entire portion of about 50 acres on the allegation that he had purchased it for a consideration of Kshs. 125,000/=. In the year 1987, Ole Koriata, transferred the suit property to the defendant herein as a gift. The defendant is said to have been then the area District Commissioner. The defendant became registered as proprietor of the suit property on 24 March 1987, and in 1989, he was issued with a title deed. It is deposed that all this time, the plaintiffs were in occupation of the suit property and have been in occupation since then. It is their claim that their occupation has been open, continuous and uninterrupted for a period in excess of 12 years. In the month of February 2012, the plaintiffs saw some people visiting the land and upon enquiry, they stated that they wanted to purchase it from the defendant. The plaintiffs sought the defendant who informed them that the land belongs to him.
3. The defendant was served with the Originating Summons but he did not file any appearance nor any replying affidavit to the same. On 9 July 2013, directions were taken that the Originating Summons do proceed by way of viva voce evidence.

4. The 1st plaintiff testified that he was born in the year 1965 on the suit property. He stated that he has lived with his family on this land. The other plaintiffs are his brothers, his wives, sons and in-laws. He stated that they have a boma, cows and themselves on the suit land. They plough and graze their cattle here. He testified that the land should therefore be given to them.

5. No submissions were filed by counsel for the plaintiffs.

6. I have considered the matter. This is a suit for adverse possession. To succeed in a claim of this nature, it is trite law that one needs to demonstrate quiet, open, exclusive and continuous (uninterrupted) occupation for a period in excess of 12 years. Such occupation must not be with the permission of the land owner. That is precisely what the plaintiffs have demonstrated in this matter. They have shown that they were born on the suit land and they have been in occupation since then. They farm on the land and there is no evidence that they have occupied the land forcefully with violence or that there has ever been any interruption. Their possession of the land has not been in secret but has been open. As I mentioned earlier, the defendant has not come to court to refute any allegation of the plaintiffs.

7. From the above, I am convinced on a balance of probabilities, that the plaintiffs are entitled to the suit property by way of adverse possession. I now issue a declaration that the plaintiffs have acquired the suit property by way of adverse possession. The suit property may be registered in their collective names.

8. Since the defendant did not defend this suit, I make no orders on costs.

9. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 10th March , 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Morintat for plaintiffs

N/A for defendant

CA : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU