



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC CIVIL SUIT NO. 86 OF 2010 (OS)**

**IN THE MATTER OF : THE PARCEL OF LAND KNOWN AS PLOT NO 2630/111/MN**

**IN THE MATTER OF : THE LIMITATION OF ACTIONS ACT CAP 22 OF THE LAW  
OF KENYA**

**BETWEEN**

**BONFACE KAHINDI KATANA.....PLAINTIFF/APPLICANT**

**-VERUS-**

**VIRNEKAS MWANAHARUSI NIHAZI**

**VERNEKAS ERNST DIETER.....DEFENDANTS/RESPONDENTS**

**JUDGEMENT**

1. The Plaintiff took out this originating summons on 22<sup>nd</sup> March 2010 against the Defendants seeking for an order to be declared as the proprietor of the Plot No 2630/111/MN having acquired it by way of adverse possession. The summons was supported by the affidavit of Boniface Kahindi Katana.
2. The service of summons was effected by placing an advertisement in the daily nation newspaper. The Defendants did not enter appearance within the 21 days after the advertisement as prescribed in law. The matter was fixed for directions and the application was served in the Daily Nation of 11<sup>th</sup> September 2010 at page 33. When this matter came up for directions before the Judge on 15.4.2011, the trial Judge directed that the matter proceed by way of affidavit evidence.
3. The Plaintiffs set the suit down for hearing on 14.12.2015 and the hearing notice served through advertising in the Daily Nation of 23<sup>rd</sup> November 2015. The Defendants did not appear. The suit thus proceeded unopposed. The plaintiff annexed a certified copy of the records which shows at entry No 6 that the Defendants are registered as owners of the suit parcel since 17<sup>th</sup> January 1979 to date.
4. The plaintiff deposed that he has built a house on the land and he does carry on farming on the suit land. He deposed further that he has used the land for over twelve (12) years which occupation has been open and obvious. He urged the Court to make an order declaring him as owner of the suit property and that he be registered as the owner thereof.
5. In a claim for adverse possession, the Applicant is required to prove that the land in question is registered in the name of the Defendants. Secondly that the Applicant has dispossessed the Defendants of land for a period of over 12 years. Thirdly that this possession was open and without interruption by the owner of the land (**Wanje vs Saikwa (1984) KLR 275**). In the present case, the plaintiff has stated that he has fulfilled these requirements and his facts have not been contravened. The Defendants have been served with Court process by advertisement in a widely circulated newspaper which is allowed in law but failed to defend the suit.
6. Consequently I am satisfied that the plaintiff has demonstrated that he has a good case. I do grant the prayers in the originating summons in terms of ground 5 of the summons i.e that the plaintiff is duly and legally entitled to the said land by virtue of adverse possession. The Registrar of Titles

Mombasa is hereby directed to rectify the register and register the plaintiff as the proprietor of land plot No 2630/111/MN, Title No CR 25067 measuring 0.0375 in place of the defendants. The plaintiff to bear his costs of this suit.

**Judgement dated and delivered at Mombasa this 28th day of April 2016**

**A. OMOLLO**

**JUDGE**