



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT KISUMU**  
**ELC CASE NO.6 OF 2015**

**SAMSON OCHUONYO ONEYA.....PLAINTIFF**

**VERSUS**

**MUDHUNE OBOTE.....DEFENDANT**

**JUDGMENT**

1. **Samson Ochuonyo Oneya**, the plaintiff filed this suit against **Mudhune Obote**, the Defendant, through the originating summons dated 12th January 2015 praying to be registered with land parcel **East Gem/Anyiko/965**, measuring 0.8 hectares, as proprietor for having been in adverse possession for over 12 years. The summons were served through an advertisement in the **Standard Newspaper** of 26th May 2015 and an affidavit of service sworn on 22nd June 2015 filed. No appearance or defence was filed and by letter dated 22nd June 2015, the Plaintiff applied for interlocutory judgment. The interlocutory judgment was entered on 23rd July 2015 and formal proof took place on 23rd February 2016 when the Plaintiff testified as PW1.

2. In his testimony the Plaintiff told the court that he was born in 1945 and has been living on the land that he later learnt was known as **Est Gem/Anyiko /965** with his family. That his mother and father died in 1964 and 1976 respectively and has buried them on that land. That when he conducted a search on the land on 22nd October 2014, he discovered that the land was registered in the names of **Mudhune Obote**, the Defendant. The Plaintiff produced a copy of the search certificate and 12 photographs showing the structural developments on the land as exhibits 2 and 1 respectively. He also produced a copy of register of the land as exhibit 3 that shows that the land was registered in the names of the Defendant on 22nd December 1970 as first registration. The Plaintiff informed the court that **Martin Oneya**, who is a son of his brother, also lives on that land. Finally, the Plaintiff stated that the land should have been registered in the names of his father.

3. The issues for determination as as follows:

- a) Whether the Defendant is the registered proprietor of the suit land **East Gem/Anyiko/965**.
- b) Whether the Plaintiff has been in adverse possession of the said land and if so since when.
- c) Whether the Defendant's title to the land has been extinguished and if so whether the Plaintiff should be registered as as proprietor.
- d) Who pays the costs of this suit.

4. The court has considered the pleadings filed herein and the testimony of the Plaintiff and come to the

following determinations;

- a) That the suit land **Est Gem/Anyiko/965** was after land adjudication registered in the names of **Mudhume Obote**, the Defendant on 22nd December 1970.
- b) That the Plaintiff and his parents have been living on that land since his birth in 1945 and the Defendant has never interfered with their use of the land even after being registered as the proprietor in 1970. That from the testimony given by the Plaintiff, the land was meant to be registered with his father but he died in 1976 without knowing it had been registered in somebody else names. He could therefore not have been in adverse possession of the land that he believed was his.
- c) That the plaintiff set up his home on the land in 1993 and has been using it with his family and son to his deceased brother ever since and a period of about 22 years had passed by the time he filed this suit. That the Plaintiff has therefore been in adverse possession of the suit land for over 12 years and the title of the Defendant, as the registered proprietor of the said land has been extinguished under **Section 17 of the Limitation of Actions Act Chapter 22 of Laws of Kenya**.
- d) That the Plaintiff should be registered as proprietor of the suit land as an adverse possessor as the period within which the Defendant could have initiated steps to recover vacant possession has lapsed under **Section 7 of the Limitation of Actions Act**.

5. That the court finds that the Plaintiff has established his claim against the Defendant on a balance of probabilities and judgment is hereby entered in his favour as follows;

- a) That the title of the Defendant, **Mudhume Obote**, as proprietor of land parcel East **Gem/Anyiko/965** is hereby declared extinguished under **Section 17 of the Limitation of Actions Act**.
- b) That the Plaintiff, **Samson Ochuonyo Oneya**, is hereby declared as the owner of land parcel **East Gem/Anyiko/965** under adverse possession.
- c) That as the Defendant has not participated in these proceedings and there is no confirmation whether he received the demand notice, the Plaintiff to bear his own costs.

It is so ordered.

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 27th DAY OF APRIL 2016**

In presence of;

Plaintiff/Applicant Absent

Defendant/Respondent Absent

Counsel Mr Onayngo for Plaintiff

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/4/2016**

27/4/2016

S.M. Kibunja J

Oyugi court assistant

Plaintiff/Applicant absent

Defendant/Respondent absent

Mr Onyango for Plaintiff

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/4/2016**

Court: Ruling delivered in open court in presence of Mr Onyango for Plaintiff.

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/4/2016**