



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 145 OF 2014 (O.S)

MOSES WANYONYI WEPUKHULUPLAINTIFF

VERSUS

JOSHUA KIPKETER ALAPIYDEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Defendant is the registered owner of **LR No. Kwanza/Namanjalala Block 2/Sarora/247** (Suitland). The suitland is **2.064 hectares**. The Plaintiff brought this suit against the Defendant seeking an order of court that he had acquired **3 ½ acres** of that land by way of adverse possession.
2. The Defendant who was duly served with summons to enter appearance neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The Plaintiff testified that on 16/7/1995 he bought two acres from the Defendant. The two acres were part of the suitland. The Defendant later sold **1.2 acres** to one **Hesbon Midikira Ambani**. The Plaintiff and **Hesbon Midikira Ambani** were put in possession of the respective portions which they had bought.
4. On 2/7/2012, **Hesbon Midikira Ambani** sold his **1.2 acres** to the Plaintiff. The Plaintiff testified that he fenced his portion and put up a posho mill and has since carried out developments on his portion of the land. The Defendant later sold the remaining portion of the suitland to one **Nyamanya**. The Defendant moved out of the suitland.
5. The Plaintiff has been staying on the suitland peacefully. The Defendant has however refused to transfer the portion he bought from the Defendant as well as the portion he bought from **Hesbon Midikira Ambani** into his name.

ANALYSIS OF EVIDENCE, THE LAW AND ISSUES FOR DETERMINATION

6. The Plaintiff produced an agreement between him and the Defendant [**Exhibit 1**]. According to this agreement, the Plaintiff bought two acres and paid **Kshs 97,000/=** on signing the agreement. He was put in possession immediately. The plaintiff also produced a copy of sale agreement between the Defendant and one **Hesbon Midikira Ambani** [**Exhibit 2**]. This agreement was made on 16/9/1999. The Defendant sold **1.2 acres** to **Hesbon Midikira Ambani**. The

consideration was **Kshs 110,000/=**. **Hesbon Midikira** paid **Kshs 92,000/=** on signing the agreement. The balance was to be cleared on 24/9/1999.

7. On 2/7/2012, the Plaintiff bought **1.2 acres** from **Hesbon Midikira Ambani** .An agreement between him and Ambani was produced as **exhibit 3**. The consideration was **Kshs 600,000/=**. A down payment of **kshs 110,000/=** was made on 2/7/2012. The balance of **Kshs 490,000/=** was cleared on 10/8/2012 as per the acknowledgement produced as **exhibit 4**. This meant that the Plaintiff's entitlement in the suitland was **3.2 acres**.
8. The issue for determination in this case is whether the Plaintiff has acquired **3.2 acres** by way of adverse possession. The Plaintiff was put in possession on 16/7/1995. **Hesbon Mudikira Ambani** was put in possession on 16/9/1999. There is evidence that both the Plaintiff and Ambani remained in possession of their respective portions until 2/7/2012 when Ambani sold his **1.2 acres** to the Plaintiff.
9. Both the Plaintiff and Ambani had been peacefully staying on their respective portions. None of the two was taken before the Land Control Board for consent. The Defendant is the registered owner of suitland as per the extract of title produced as **exhibit 6**. There is no evidence that the Defendant took any steps to interrupt the peaceful and quiet enjoyment of both the Plaintiff and Ambani.
- 10.The law regarding adverse possession is that one has to be in open, peaceful and uninterrupted possession of the portion he claims for a period of 12 years. Such possession must be adequate in continuity, in publicity and in extent to show that possession was adverse to the proprietor. [*see Nakuru Court of Appeal Civil Appeal No. 231 of 1999 between Njuguna Ndatho and Masai Itumo & 2 others 2002 eKLR*]. The Plaintiff has been in his portion for 19 years prior to filing this case. Ambani had been in possession of 1.2 acres for over a period of 12 years after which he sold his portion to the Plaintiff. It is therefore clear that the Defendant has lost title to the **3.2 acres** which the Plaintiff is claiming.
- 11.The Defendant did not take any effective steps to stop time from running against him. It has been held that time against the title holder starts running from the time the adverse possessor is put in possession. The Plaintiff and Ambani had been in possession from **1995** and **1999** respectively. As at the time Ambani sold **1.2 acres** to the Plaintiff, the Defendant's interest on the **1.2 acres** had been lost as was the case with the portion of **2 acres** held by the Plaintiff.
- 12.The Plaintiff produced photographs showing that he has done substantial developments on his portion of land. The photographs were produced as **exhibit 5**.

DECISION

- 13.I find that the Plaintiff has proved his case to the standards required. The Defendant is holding the **3.2 acres** of the suitland in trust for the Plaintiff. That trust is hereby terminated and an order is given that the Plaintiff be registered as owner of **3.2 acres** out of the suitland. The Plaintiff shall have costs of this suit to be paid by the Defendant.

Dated, signed and delivered at Kitale on this 20th day of April 2016.

E. OBAGA

JUDGE

In the presence of Mr Ingosi fro Mr Okile for Plaintiff.

Court Assistant – Isabellah

E. OBAGA

JUDGE

20/4/16