



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.132 OF 2015 (OS)

1. FABIA CAMPANELLA

2. PAOLA CAMPANELLA.....APPLICANTS

=VERSUS=

1. ROCCHI PAMPEO

2. ANGELLO RICCI

3. LAND REGISTRAR, MOMBASA

4. THE HON. ATTORNEY GENREAL.....RESPONDENTS

J U D G M E N T

1. The Originating Summons before me is dated 3rd August, 2015. In the Summons, the Applicants are seeking for these orders:-

(a) The Applicants have become entitled by adverse possession of all that land measuring approximately 1.131 acres on Plot No. 1883 (424/31) situated in Malindi.

(b) The Applicants be registered as the proprietors of the said entire land measuring approximately 1.131 Acres on Plot No. 1883 (424/31).

2. The suit is premised on the grounds that the Applicants have been in adverse possession of the suit property for over 12 years.

3. According to the deposition of the 1st Applicant, the 1st Respondent was registered as the proprietor of the suit property vide an Indenture of Conveyance dated 19th November, 1991; that on 12th October, 1994, an Indenture of Conveyance between the 1st Respondent, Mazzi Alma and Stanzani Pincle in respect of half share in the suit property was registered and that on 18th February, 1997, another Indenture between the 2nd Respondent and the 1st Respondent in respect of the undivided shares was registered.

4. It is the deposition of the 1st Applicant that on 2nd April 2003, an Indenture between Stanzani Pincla and himself was registered while an Indenture between the 2nd Applicant was registered in respect of the half share of Mazzi Almas remaining parcel of land on 21st June, 2005.

5. Although the 1st and 2nd Respondents are the registered proprietors of part of the suit land, the 1st Applicant has deponed that they have abandoned their share for more than 12 years; that it is himself and the 2nd Applicant who have been residing on the land and that they have been paying the rates for the said portion.

6. It is the 1st Applicant's deposition that him, together with the 2nd Applicant, should be registered as the proprietors of the suit property.

7. Although the Respondents were served with the Originating Summons, they neither entered appearance nor filed a Replying Affidavit.

8. The Applicants' advocate filed detailed submissions and authorities which I have considered.

9. On the basis of the documents before me and the deposition of the 1st Applicant, and in the absence of a defence from the Respondents, I am satisfied that the Applicants have lived on the suit property for than 12 years *nec vi, nec clem, nec precario*.

10. For those reasons, I allow the Originating Summons dated 3rd August 2015 as prayed.

Dated, signed and delivered in Malindi this **14th** day of **September**, 2016.

O. A. Angote

Judge