



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.77 OF 2016 (O.S)

1. SALIM NZAGU BAKARI

2. MIKE KAINGU KAZUNGU.....PLAINTIFFS/APPLICANTS

=VERSUS=

SHUKRAN LIMITED.....DEFENDANT/RESPONDENT

J U D G M E N T

1. This suit was commenced by way of an Originating Summons dated 30th March, 2016. The Originating Summons was filed pursuant to the provisions of Section 38 (1) of the Limitation of Actions Act and Order 37 Rule 7 of the Civil Procedure Rules.

2. In the Originating Summons, the Applicants have averred that they have been in physical occupation of a parcel of land known as Plot number 404/III/MN situate in Kilifi County for over twelve (12) years; that their occupation has been open, continuous and uninterrupted for the said period and that other than themselves, no one else has been in occupation of the suit property.

3. The Originating Summons is supported by the Affidavit of the 1st Applicant who deponed that the suit property belonged to Mr. Collin Campbell and Morgery Emily Campbell; that the registered proprietor left him on the suit property as a caretaker and that he has been living on the land for more than 30 years with his family since the owners left.

4. The 1st Applicant deponed that the registered proprietor of the suit property has never demanded that he vacates the land neither have they interfered with his quiet and peaceful possession of the land.

5. Although the Respondent was served with the Originating Summons in the Standard Newspaper of 20th April, 2016, it neither entered appearance nor filed a Defence. The matter proceeded for hearing on 21st September, 2016.

6. The 2nd Applicant, PW1, informed the court when the matter came up for formal proof that he has been staying on the suit property for more than 24 years; that he stays on the suit property with the 1st Applicant and that no one has ever attempted to evict them from the land.

7. PW1 produced in evidence the Certificate of Postal Search showing that the Defendant was the registered owner of plot number 404/III/MN.

8. PW1 also produced in evidence the demand notice from the County Government of Kilifi which shows that Collin Campbell and Margery Emily Campbell, who are the rateable owners of Plot NO. 404 owed the County Government Kshs.18,944,200.

9. Indeed, there is no evidence before me to controvert the Applicants' assertions that they have been living on the suit property continuously, peacefully and openly for a period of more than twelve (12) years.

10. Section 7 of the Limitation of Actions Act provides that an action may not be brought by anyone to recover land after the end of the right to action, which is twelve years.

11. Where a person claims to have become entitled by adverse possession to land registered under any land registration enactment, he is allowed by Section 38 of the Limitation of Actions Act to apply to the High Court for an order that he be registered as the proprietor of the land in place of the person then registered as the proprietor.

12. An order to register an adverse possession takes effect on its registration, subject to any unextinguished entry on the register

13. The above statutory provisions show that adverse possession is a statutory method of acquiring title to land by occupation of the land for a period of more than 12 years.

14. In the absence of evidence to show that the Applicants occupation of the suit property was ever interrupted by the registered owner, or evidence of effective entry on the suit property, I am satisfied that the Plaintiff has satisfied the requirements for acquisition of land by adverse possession.

15. The Respondent lost his right to the property upon being dispossessed by the Applicants who have over the period of occupation used it *nec vi nec claim, nec precario*.

16. For those reasons, I allow the Originating Summons dated 30th March, 2016 in the following terms:-

(a) The Applicants be and are hereby declared the owners of plot number 404/III/MN.

(b) The Chief Land Registrar or her nominee to issue the Certificate of Title for land portion number 404/III/MN in the joint names of Salim Nzagu Bakari and Mike Kaingu Kazungu forthwith.

(c) The Applicants to bear their own costs.

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

O. A. Angote

Judge