



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO. 87 OF 2014 (O.S)**

**1. MOSES MASIVAI BARASA**

**2. DZAME AKIDA DECHE.....APPLICANTS**

**=VERSUS=**

**1. CHARLES DAVID HOWARD HEWITT STUBBS**

**2. DAVID EWART LENNARD SLATER ..... RESPONDENTS**

**J U D G M E N T**

**Introduction:**

1. This suit was commenced by way of an Originating Summons. In the suit, the Applicants are seeking for the determination of the following questions.

**(a) Whether the Applicants are entitled to be declared as the proprietors of 4.514 Ha of plot number 1705/233/41- Kilifi, which they have acquired by adverse possession after staying on the plot for over twelve (12) years.**

**(b) Whether the Applicants are entitled to be registered as the owners of plot number 1705/233/41 Kilifi and be issued with a Certificate of title.**

**(c) Whether the Applicants are entitled to the costs of the suit.**

2. The Respondents were served with the pleadings by way of advertisement in the Daily Nation of 9<sup>th</sup> October 2014. The Respondents did not enter appearance or file a Replying Affidavit.

**The Applicants' case:**

3. According to the Applicants' Supporting Affidavit, they have lived on the suit property for over 33 years.

4. The 1<sup>st</sup> Applicant deponed that his parents entered the suit property in 1981 without any body's authority and that his late father lived on the land for 17 years before he died.

5. It is the Applicants' case that the Respondents have never occupied the suit property and

that they have dispossessed the Respondents the suit property for a period of over 12 years and therefore entitled to the property.

**Submissions:**

6. The Applicants' advocate submitted that the Applicants had proved that they entered to the suit property in 1981 without the Respondents' permission; that there is evidence of actual possession of the suit property for a period of over 33 years and that the Applicants have also proved that their possession of the suit property has had no interruption from anybody.

**Analysis and findings:**

7. The Applicants annexed on their Supporting Affidavit the Certificate of Postal Search as on 28<sup>th</sup> April 2014 which shows that the Respondents are the registered proprietors of the suit property.

8. The Applications also annexed a letter from the Senior Chief of Kilifi Township Location dated 4<sup>th</sup> April 2014. In the letter, the Chief has stated that indeed the Applicants have been living on the suit property for more than 33 years without any interruption.

9. In the absence of evidence to the contrary, I am satisfied that the Applicants have proved their case on a balance of probabilities and are entitled to the orders being sought in the Originating Summons.

10. For those reasons, I allow the Applicants' suit in the following terms:

**(a) The Applicants be and are hereby declared as the proprietors of plot number 1705/233/41-Kilifi which they have acquired by adverse possession.**

**(b) The Applicants be registered as the owners of plot number 1705/233/4 as tenants in common and be issued with a certificate of title.**

**(c) Each party to pay his own costs**

Dated and delivered in Malindi this 13<sup>th</sup> day of February, 2015.

**O. A. Angote**

**Judge**