



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC NO. 97 OF 2009 (OS)**

**IN THE MATTER OF: LAND PARCEL NO. 150/II/MN**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION THAT THE  
PLAINTIFFS/APPLICANTS HAVE OBTAINED OWNERSHIP OF NINE DECIMAL NINE SIX  
(9.96) ACRES OF LAND OF THE ABOVE SAID LAND BY WAY OF ADVERSE POSSESSION**

**BETWEEN**

- 1. KAHINDI KATANA CHENGO**
- 2. SAMUEL KENGA NDENGE**
- 3. CHARO NDENGE TUJI**
- 4. NDENGE TUJI MBITA**
- 5. CHANGAWA NDENGE TUJI**
- 6. KAHINDI FUNDI MAITHA**
- 7. SONY NELSON KENGA**
- 8. HAMIS CHARO NDENGE**
- 9. SIDI NDENGE TUJI**
- 10. DAMA WANDENGE MOLE**
- 11. LUNUVO TSENDE BENDEGWA**
- 12. KARISA FUNDI MAITHA**
- 13. JUMWA FUNDI MAITHA**
- 14. JUMA KAHINDI FUNDI**

**15. ISAAC BOYED BEJA**

**16. NAIMA KENGA NDENGE**

**17. HALIMA MBARUK KHAMISI**

**18. KASICHANA KASHAHA CHENGO**

**19. MASHA MWAKAMUSHA**

**20. JUMA LAWRENCE MNYAPARA.....PLAINTIFFS**

**=AND=**

**1. HAFSA OMAR MZEE HAJI**

**2 . FATUMA AHMED OMAR MZEE HAJI**

**3. AMINA AHMED OMAR MZEE HAJI**

**4. ELAJI AHMED MZEE HAJI.....DEFENDANTS**

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

#### **Introduction:**

1. The Plaintiffs in this matter are seeking to be declared as the proprietors of 9.96 acres of plot no. 150/III/MN which they claim to have acquired by adverse possession.
2. According to the Affidavit in support of the Originating Summons dated 27<sup>th</sup> October 2009, the 1<sup>st</sup> Plaintiff has deponed that the Plaintiffs have lived on the suit property for over twelve (12) years and that the last person to enter the suit property did so in the year 1996.
3. The Plaintiffs have further deponed that in the year 2002, the 3<sup>rd</sup> Defendant purportedly obtained eviction orders from the court in Kilifi following an award by the Land Disputes Tribunal in respect to one Boyed Beja Mwamwaka and purported to use the said eviction order against the Plaintiffs, yet they were not parties to the suit.
4. The 1st Plaintiff has averred that the entry onto the suit premises by the Plaintiffs was without the Defendants' permission and that their occupation of the suit property has been open, continuous, uninterrupted, exclusive and adverse to the title of the registered owners.
5. In her Replying Affidavit, the 3<sup>rd</sup> Defendant deponed that her, together with her siblings, are the registered proprietors of the suit property; that in 1998, the 15<sup>th</sup> Plaintiff whom she knows as Boyed Beja Mwamwaka and not Issac Boyd Beja entered her plot and started subdividing it and allocating it to other people and that she thereafter filed a land dispute in Tribunal case number 63 of 1998 which was decided in her favour on 26<sup>th</sup> March, 1998.
6. It is the 3<sup>rd</sup> Defendant's deposition that the eviction order was against the named Defendant and his agents and any other person who was illegally occupying her land and that the Plaintiffs were brought on the suit property by Boyed Beja Mwamwaka.
7. The 3<sup>rd</sup> Defendant deponed that the doctrine of adverse possession is inapplicable because she has been trying to evict any squatter who entered the suit land; that the Plaintiffs have not had quiet and uninterrupted occupation of the land for twelve years and that the suit should be dismissed with costs.
8. When directions were taken, the parties agreed to proceed by way of viva voce evidence.

#### **The Plaintiffs' case:**

9. The 1<sup>st</sup> Plaintiff, PW1, informed the court that he is the son of the 18<sup>th</sup> Plaintiff, Kasichana

- Kashehe and that he was born on the suit premises in 1972.
10. It was the evidence of PW1 that he has one wife and five children who all live on the suit property.
  11. According to PW1, he is occupying land measuring  $\frac{1}{2}$  an acre and that in the year 2009, 3<sup>rd</sup> the Defendant tried to evict them from the suit property but did not succeed.
  12. PW1 informed the court that it is her mother, the 18<sup>th</sup> Plaintiff, who was on the suit property at the time he was born. PW1 further stated that her mother found the Sidi Ndenge Tuji, the 9<sup>th</sup> Plaintiff, on the land.
  13. In cross examination, PW1 stated that Boyed Benjamin Mwamwaka, who is his brother, stays in Kaloleni and not on the suit property.
  14. PW1 denied that it is the said Boyed Beja Mwamwaka who took them on the suit property in 1998.
  15. PW1 informed the court that the property belonged to their grandfather and that although Boyd Beja Mwamwaka is his brother, they have different fathers.
  16. According to PW1, the Defendants, and especially the 3<sup>rd</sup> Defendant, had harassed them for many years.
  17. It was the evidence of PW1 that in the suit that was filed in 1998 by the 3<sup>rd</sup> defendant, it is only Boyed Beja Mwamwaka who was sued and that the 15<sup>th</sup> Plaintiff, Issac Boyed Beja, is the son of Boyed Beja Mwamwaka.
  18. The 6<sup>th</sup> Plaintiff, PW2, informed the court that he was born on the suit property in 1955. It was his evidence that his mother was known as Jumwa Fundi Maitha, the 13<sup>th</sup> Plaintiff, and that she died after the filing of this suit.
  19. According to the evidence of PW2, he has one wife and two children who are living on the suit property with her and that his first born was born on the suit premises in 1977; that the Defendants attempted to evict them from the suit property without a court order and that he is occupying about half an acre of the suit property.
  20. In cross-examination, PW2 stated that when his mother, the 6<sup>th</sup> Plaintiff, died, he buried her on the suit property.
  21. It was his evidence that Boyed Beja does not stay on the suit property but stays in Kaloleni although his mother, the 18<sup>th</sup> Plaintiff, stays on the suit property.
  22. PW2 stated that although he was never sued in the Tribunal, his house was demolished and that for many the years he has been staying on the land, he had never seen the Defendants.
  23. The 9<sup>th</sup> Plaintiff, PW3, informed the court that he was born at Chanaganda in Kaloleni and got married to the 4<sup>th</sup> Plaintiff, who is now deceased.
  24. It was the evidence of the 9<sup>th</sup> Plaintiff that she moved to the suit property before independence and that she has ten children who were all born on the suit property.
  25. According to PW3, the children who are still alive and staying on the suit premises are the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Plaintiffs.
  26. It was the evidence of PW3 that she is occupying  $\frac{1}{2}$  an acre of the suit property and that she has four houses.
  27. In cross-examination, PW3 stated that her late husband, the 4<sup>th</sup> Plaintiff died while this matter was pending.
  28. According to PW1, Kasichana, the 18<sup>th</sup> Plaintiff and mother of Boyed Beja found them already living on the suit land.
  29. PW3 informed the court that when they moved on the land, they found a Mr. Ndole who allowed them to settle on the land which was bushy by then. PW3 stated that she never saw the Defendants.
  30. The 12<sup>th</sup> Plaintiff, PW4, stated that he was born in 1969 on the suit property. It was his evidence that his mother, the 13<sup>th</sup> Plaintiff, is not deceased.
  31. It was the evidence of PW4 that although the Defendants attempted to evict them in the year 2009, they did not succeed because they did not have a valid court order.
  32. The 18<sup>th</sup> Plaintiff, PW5, informed court that his father was called Ngala wa Mbogo while his mother was called Mengolo wa Tsori.

33. It was the evidence of PW5 that while staying with her husband at Meandeni, they were blessed with one child, namely Boyed Beja Mwamwaka, PW17.
34. PW5 informed the court that when her father died, her mother went to her father's home which was where the suit property is situated. It was her evidence that her maternal grandfather, Asumani Ndere, resided on the suit property with her grandmother, Mwaka Manyae and that her grandfather was buried on the suit property.
35. When she divorced with her husband, PW5 informed the court that she moved to the suit property which was before independence and stayed with her mother, grandfather and grandmother.
36. It was her evidence that when she moved on the suit property, she found the father of the 16<sup>th</sup> and 12<sup>th</sup> Plaintiffs living on the land. She also found the 4<sup>th</sup> Plaintiff, who is the father of the 2<sup>nd</sup> Plaintiff, the 3<sup>rd</sup> Plaintiff, the 5<sup>th</sup> Plaintiff, the 11<sup>th</sup> Plaintiff and also the grandfather of the 8<sup>th</sup> Plaintiff and the 16<sup>th</sup> Plaintiff.
37. According to PW5, she has lived on the suit property for more than 20 years and that the only time the Defendants attempted to evict them was in the year 2009.
38. In cross-examination, PW5 stated that Boyed Beja Mwamwaka, who is his eldest son, left the suit property and went to stay in Kaloleni and that the suit property belongs to her maternal grandfather, Asumani Ndere.
39. PW5 denied that it was her son, Boyed Beja, who invited them on the suit property.
40. Plaintiff number 17, PW6, stated that he was born on the land and that his mother is Plaintiff number 18 (PW5).
41. Plaintiff number 2, PW7, informed the court that he was born on the suit property in 1953 and that his late father, Plaintiff number 4, was buried on the suit property.
42. The other Plaintiffs, PW8, PW9 and PW10 stated that they were born on the suit property while PW11 stated that he is the brother of PW10 and that he was also born on the suit property.
43. It was the evidence of PW11 that their father, now deceased, came from Kaloleni and was invited on the suit property by Asumani Ndere.
44. The same version of having been born on the suit land was given by PW12, PW13, PW14, PW15 and PW16.
45. Boyed Beja Mwamwaka, PW17, informed the court that he is currently living in Kaloleni. It was the evidence of PW17 that his mother is Kasichana Kashaha, the 18<sup>th</sup> Plaintiff, while his father who stays in Kaloleni is called Mwamwaka.
46. According to PW1, his maternal great grandfather was called Asumani Ndere and he lived on the suit property.
47. It was the evidence of PW17 that the 15<sup>th</sup> Plaintiff, Isaac Boyed Beja, is his son and he stays on the suit property with his grandmother, the 18<sup>th</sup> Plaintiff.
48. According to PW17, his mother, the 18<sup>th</sup> Plaintiff, moved on the suit property to live with her mother before independence after separating with her husband.
49. According to PW17, when his mother moved to the suit property, there were three other families, namely Mzee Maitha, Mzee Ndege and Mzee Kasheha.
50. PW17 stated that by the time the 3<sup>rd</sup> Defendant herein sued him in the Tribunal, there were many people living on the suit property.
51. PW17 denied that he is the one who moved the Plaintiffs on the suit property.

#### **The Defence case:**

52. The 3<sup>rd</sup> Defendant, DW1, informed the court that the 1<sup>st</sup> Defendant, now deceased, was her aunt, while the 2<sup>nd</sup> Defendant, who is also deceased, was her sister. The 4<sup>th</sup> Defendant was also her sister and is also deceased.
53. DW1 informed the court that they inherited the suit property from their late father who was the registered proprietor.
54. It was the evidence of DW1 that the son of her aunt, a Mr. Mwanana, is the one who used to stay on the suit property.
55. It was her evidence that when she saw a wall on the suit property, she was told that the same had been put up by Boyed Beja, PW 17.
56. It was the evidence of DW1 that she reported the issue of the construction of the wall to the Chief

- and the District Officer and also filed a case with the Tribunal in case Number 63 of 1998.
57. The evidence of DW1 is that the court ordered for the eviction of the Plaintiffs in Kilifi CMCC No. 14 of 1999.
  58. DW1 denied that the Plaintiffs were born on the suit property as claimed.
  59. DW1 denied ever knowing a man known as Asuman Ndore. It was her evidence that she visited the land after independence and saw Boyed Beja constructing on the suit property.
  60. According to DW1, the said Boyed Beja was the only one on the land when she lodged the case at the Tribunal and that the members of the Tribunal visited the land.
  61. In cross-examination, DW1 stated that when the Tribunal moved around the suit property, they saw other houses which were "aside" and that she was present during the site visit.
  62. When questioned further, DW1 stated that it is possible that there were more houses on the suit property because she did not know the extent of the boundaries of their land. It was her evidence that she saw houses which were old although she did not know the occupants of the said houses.
  63. DW1 stated that she has never lived on the suit property and that she only sued Boyed Beja because he was claiming that the suit property was his. It was the evidence of DW1 that it is Boyed Beja who invited the other people on the suit property.
  64. The son of the 3<sup>rd</sup> Defendant, DW2, informed the court that he has been on the suit property on numerous occasions.
  65. According to DW2, DW1 informed him that someone had invaded the suit property and that is why she filed a suit in the Tribunal.
  66. In cross-examination, DW2 stated that he saw eight houses on the suit property. It was the evidence of DW2 that her mother, DW1, informed him that it was Boyed Beja who was harassing her over the suit property and that is why she sued him.
  67. DW2 informed the court that although he saw eight houses as at the time they filed the dispute in the Tribunal, the number of houses had increased by the time they obtained the order of the Tribunal.

#### **The Plaintiffs' submissions:**

68. The Plaintiffs' counsel submitted that from the evidence adduced, the suit property is occupied by three families: Kasichan Kashaha Chengo's family comprising of the 18<sup>th</sup>, 1<sup>st</sup>, 17<sup>th</sup> and 20<sup>th</sup> Plaintiffs, Fundi Maitha's family comprising of the 6<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Plaintiffs and Ndege Tuji Mbita's family comprising the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 16<sup>th</sup> Plaintiffs.
69. The Plaintiffs' advocate submitted that the 3<sup>rd</sup> Defendant was lying when she stated that the only person who was on the suit property was Boyed Beja; that the sketch map by the Tribunal shows that there were other homesteads on the suit property and that those families have since expanded due to nature and procreation.
70. Counsel submitted that the 3<sup>rd</sup> Defendant was unable to identify the owners of the homesteads indicated on the sketch plan of the Tribunal.
71. According to counsel, evidence was tendered to show that although the Defendants had a house on the suit premises, they abandoned it, a clear indication that the Defendants had been dispossessed of the the suit land.
72. Counsel submitted that the evidence of the 3<sup>rd</sup> Defendant in the Tribunal that Boyed Beja forcefully took over possession of the suit land immediately after her grandfather's death in 1957 confirms the evidence of the 18<sup>th</sup> Plaintiff that she entered the suit property sometimes before independence with her son, Boyed Beja, who was born in 1958.
73. Counsel submitted that the deposition of the 3<sup>rd</sup> Defendant in her Replying Affidavit that Boyed Beja entered the suit premises in 1998 contradicted her earlier evidence before the Tribunal that the entry was in 1957, which was soon after her grandfather's death.
74. Consequently, it was submitted, the Plaintiffs have proved that they entered the suit property before independence and others were born thereon; that the entry was without anybody's permission; that the Plaintiffs have resided on the suit property for more than 12 years and that the said occupation has been continuous, open, uninterrupted, exclusive and adverse.

#### **The Defendants' submissions:**

75. The Defendants' advocate submitted that the history of the matter shows that prior to 1978, there was no evidence of the Plaintiffs having occupied the suit property. Counsel submitted that the suit property was a farm with a house of the registered proprietor with coconut and cashew nut trees. According to counsel, immediately the 3<sup>rd</sup> Defendant learnt that one Boyed Beja mwamwaka was entering her land, she filed a suit in the Tribunal.
76. Counsel submitted that according to the evidence that was given in the Tribunal, the Plaintiffs were not in the suit premises in 1978 when the dispute of ownership between the 3<sup>rd</sup> Defendant and Boyed started. Counsel submitted that the evidence of Boyed that he has never built a house on the suit premises is not true.
77. Counsel submitted that Boyed admitted in his evidence at the Tribunal that he had a house on the suit premises and cannot change that version now.
78. The Defendants' advocate submitted that if there were other people in occupation of the land, then they should have applied to be enjoined in the proceedings in the Tribunal. Counsel urged this court to find that the Tribunal having found in favour of the 3<sup>rd</sup> Defendant, there was no land that this court can now give to the Plaintiffs.

### **Analysis and findings:**

79. The suit before me is premised on the ground that the Plaintiffs have occupied the suit property for more than 12 years continuously, openly, exclusively and therefore the Defendants' title has been extinguished by virtue of the provisions of Section 17 of the Limitation of Actions Act. The Plaintiffs are seeking to be registered as the proprietors of the land having been entitled to it by adverse possession as stipulated under section 38(1) of the Limitation of Actions Act.
80. The only issue for determination is whether the Plaintiffs have proved on a balance of probabilities the required elements for one to succeed in a claim of adverse possession.
81. Although there are twenty Plaintiffs in this matter, the said Plaintiffs belong to three distinct families, that is, Kasichana Kashaha Chengo's family, Fundi Maitha's family and the family of Ndenge Tuji Mbita.
82. The family of Kasicha Kashaha Chengo, the 18<sup>th</sup> Plaintiff (PW5), consists of the 1<sup>st</sup> Plaintiff, her son, the 17<sup>th</sup> Plaintiff who is her daughter and the 15<sup>th</sup> and 20<sup>th</sup> Plaintiffs, who are her grandsons. Boyed Benja (PW17) also a son of Kasichana Kashaha is not a Plaintiff in this matter.
83. The family of Fundi Maitha, who is said to be deceased, consists of the 6<sup>th</sup> and the 12<sup>th</sup> Plaintiffs, who are his sons, the 13<sup>th</sup> Plaintiff, who is his wife and the 14<sup>th</sup> Plaintiff, who is the son of the 6<sup>th</sup> Plaintiff.
84. The family of Ndenge Tuji Mbita who is, also deceased, comprises of the 9<sup>th</sup> Plaintiff, who is the wife of the late Mr. Ndenge, the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Plaintiffs, who are his sons, the 10<sup>th</sup> Plaintiff, who is his daughter and the 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs, who are his grandsons.
85. Kasichana Kashaha Chengo, the 18<sup>th</sup> Plaintiff (PW5), informed the court that the mother to her father (Maternal grandfather) was known as Asumani Ndore. It was her evidence that when her father died, her mother returned to live with Mr. Asumani Ndore who was living on the suit property.
86. It was the evidence of PW5 Kasichana that she was married to her first husband and was blessed with one son, Boyed Benja Mwamwaka. However, she separated with Boyed Benja's father and went to stay with her mother on the suit property. It was the evidence of PW5 that she moved to the suit property just before independence.
87. While living on the suit property with her maternal grandfather and mother, it was the evidence of PW5 that she was blessed with three more children who included the 1<sup>st</sup> Plaintiff and the 17<sup>th</sup> Plaintiff.
88. The sons of PW5, PW1 and PW12, gave evidence and stated that they were born on the suit property.
89. According to the evidence of Kasichana, PW5, when she moved on the suit property to join her mother and grandparents, she found the family of Ndenge Tuji Mbita, the 4<sup>th</sup> Plaintiff, who is the father of the 2<sup>nd</sup> Plaintiff, the 3<sup>rd</sup> Plaintiff, the 5<sup>th</sup> Plaintiff, the 10<sup>th</sup> Plaintiff, the 11<sup>th</sup> Plaintiff and grandfather of the 8<sup>th</sup> and 16<sup>th</sup> Plaintiffs already living on part of the suit property.

90. The evidence of the family of the late Ndenge Tuji was led by his wife, the 9<sup>th</sup> Plaintiff (PW3).
91. According to the wife of Ndenge Tuji Mbita, now deceased, she moved on the suit property with her late husband before independence. It was the evidence of PW3 that they were blessed with ten children although only six are still alive.
92. Her surviving children include the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Plaintiffs who are all living on the suit property. The said children testified in this court and stated that indeed they were born on the suit property.
93. The 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Defendants have all died. However, they are still the registered proprietors of the suit property together with the 3<sup>rd</sup> Defendant, DW1.
94. According to the conveyance that was produced in this court, the said four Defendants inherited the suit property from Omar Bin Mzee Haji. The relationship of the said Omar Bin Mzee Haji and the Defendants is not relevant in these proceedings.
95. What is relevant, as I shall show later, is that the suit property was transferred from Omar Bin Mzee Haji (deceased) to the Defendants on 12<sup>th</sup> September 1961, two years before independence.
96. According to the Replying Affidavit of the only surviving Defendant, DW1, Boyed Beja Mwamwaka entered the suit premises in the year 1998 and started subdividing it and allocating it to other people.
97. The 3<sup>rd</sup> Defendant deposed in her affidavit that she lodged a dispute in the Tribunal being case number 63 of 1998 because "Boyed Beja Mwamwaka" was claiming a right of ownership of that land. The decision of the Tribunal was in her favour and she had it adopted by the court in case number 14 of 1998.
98. It is the Defendants' case that the eviction order by the Tribunal was not only against Boyed Beja but was also against his agents and any other person that was occupying the suit property. It was the evidence of the 3<sup>rd</sup> Defendant that the Plaintiffs herein filed this case when she started the process of evicting them from the suit property.
99. DW1 informed the court that it was her aunt's son who used to stay on the suit property.
100. It was her evidence that it is not true that the Plaintiffs were born on the suit property as alleged.
101. DW1 informed the court that she went to the land before independence but never saw anybody occupying it, including the grandfather of the 18<sup>th</sup> Plaintiff.
102. DW1 further stated that when she filed the suit in the Tribunal, it was only Boyed Beja who was staying on the land and that when the members of the Tribunal visited the land, they only saw the houses of Boyed Beja.
103. When DW1 was cross-examined, she admitted that it was possible that there were more houses on the suit property by the time she filed the suit at the Tribunal because she did not know the exact position of the boundaries of their land.
104. It was the evidence of DW1 that other than seeing some old houses, she did not know the occupants of those houses.
105. DW1 reiterated that the only reason that made her sue Boyed Beja was because "he was saying that the land belonged to him."
106. DW1 stated that she had never lived on the land while her aunt's son who was living on the land has since died.
107. According to DW1, the house that they had constructed on the suit property fell down although she could not tell when that happened.
108. The son of DW1, DW2, informed the court that he used to see coconut trees and mango trees. He also saw eight houses on the suit property before DW1 filed the suit at the Tribunal.
109. The evidence by DW1 shows that she was not sure of the number of houses which were on the suit property before she sued Boyed Beja in Kilifi Land Disputes case Number 63 of 1998.
110. The fact that indeed there were houses on the suit property built by people not known to the Defendants was also confirmed by the evidence of DW2.
111. In the proceedings that were produced in court, the 3<sup>rd</sup> Defendant informed the Tribunal as follows:

**"The land in question consists of 9.96 acres. Mr. Boyed Beja Mwamwaka forcefully entered to occupy our land soon after our grandfather died, forcing us to vacate from it because of his threats and as a result our house that we built on the**

**land collapsed as there was nobody to look after it.”**

112. In the same proceedings, the 3<sup>rd</sup> Defendant informed the Tribunal that they had inherited the suit property from their grandfather known as Omar Bin Mzee Haji. This inheritance, according to the title that was produced in court, was in 1961.
113. Consequently, and according to the Defendants' own evidence, they were dispossessed of the suit property sometimes in the year 1961, immediately after the death of their grandfather.
114. Boyed Beja informed the Tribunal that his late grandfather was the first person to live on the land and was buried there.
115. It was the evidence of Boyed Beja before the Tribunal that it was his grandfather, Asumani Ndore, who allowed his mother and other people to live on the suit property.
116. After hearing the parties, the panel of elders observed as follows:

**“That though he (Boyed Beja) gave a true historical back-ground on how his grandfather Athman Ndore first came and lived on the said shamba, he lived for the sake of living. He did not lodge a claim for ownership of land to the Government. Somebody else did and obtained a proper Title Deed for that land, while Athman Ndore was not even aware.....”**

117. In their verdict, the panel of elders stated that “Boyed Beja Mwamwaka is no more but a squatter on somebody's land”
118. It is therefore clear that the panel of elders agreed with the sentiments of Boyed Beja that the land was occupied by the lineage of Athman Ndore, while the title documents were held by the Defendants.
119. Consequently, the panel of elders' hands were tied because they could not have ruled otherwise.
120. In view of the evidence of the 3<sup>rd</sup> Defendant herself at the Tribunal that they were dispossessed of the suit property after the death of her grandfather in 1961, and in view of the concurrence by the panel of elders that indeed it is the family lineage of Athman Ndore who have always been in occupation of the suit property, I am in agreement with the evidence that was given by the Plaintiffs, and in particular PW5 and PW3, that they entered the suit property just before independence.
121. The Defendants never asserted their rights by filing a suit before the expiry of 12 years after the entry of the suit property by the Plaintiffs.
122. The Tribunal ruled in favour of the 3<sup>rd</sup> Defendant only in respect of Boyed Beja Mwamwaka, who is not a party to this suit and observed that he was a squatter on the Defendants' land.
123. It was therefore unlawful for the defendants to have attempted to evict the Plaintiffs from the suit property considering that they were not parties to the proceedings in the Tribunal and also considering that the Tribunal had not made an order to evict the other people who were staying on the suit property.
124. Even if the Tribunal's verdict can be interpreted to mean an order of eviction, the Plaintiffs, including Boyed Beja, still had a right to move this court for a claim of the land by adverse possession considering that it is only the High Court that can make such an order.
125. Consequently, and on the basis of the evidence before me, I am satisfied that the Plaintiffs have occupied the suit property for more than 12 years continuously, uninterrupted, openly and their possession has been adverse to the Defendants' interests.
126. The Defendants did not prove that the Plaintiffs entered the suit property in 1998 as alleged in the Replying Affidavit.
127. For those reasons, I allow the Plaintiffs' Originating Summons dated 27<sup>th</sup> October 2009 in the following terms:

**(a) The Plaintiffs be and are hereby declared as the proprietors of 9.96 acres of land known as Plot No. 150/III/MN which they have acquired by adverse possession.**

**(b) The Plaintiffs to be registered as the owners of plot number 150/III/MN and to be issued with certificates of title.**

**(c) The Defendants to pay the costs of the suit.**

**Dated and delivered in Malindi this 17<sup>th</sup> day of April, 2015.**

**O. A. Angote**

**Judge**