



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
HCCC NO. 64 OF 2012 (OS)

IN THE MATTER OF: PARCEL NO.208/III/M.N.KANAMAI [TITLE NO. C.R. 4230]

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION THAT THE
APPLICANTS HAVE OBTAINED OWNERSHIP OF 2/3 SHARE OF THE ABOVE SAID LAND
BY WAY OF ADVERSE POSSESSION**

=BETWEEN=

- 1. MWINYI MZEE KHAMISI**
- 2. JUMA MZEE KHAMISI**
- 3. SAID MZEE KHAMISI**
- 4. HASSAN MZEE HAMISI.....PLAINTIFFS/APPLICANTS**

=VERSUS=

- 1. SHER SINGH VERMA**
- 2. SHAMIT SINGH VARMA**
- 3. ASGARALI VALLIBHAI YUSUFALI**
- 4. ALI ADAM DADRAHMAN.....DEFENDANTS/RESPONDENTS**

J U D G M E N T

Introduction:

1. In the Amended Originating Summons dated 3rd July 2013, the Applicants have sought to be declared as the proprietors of the two thirds (2/3) share of plot number 208/III/MN-Kanamai Kilifi which they have acquired by adverse possession after staying on the plot for a period of twelve years.

2. The Originating Summons is supported by the Affidavit of all the Plaintiffs. In the said Affidavit, the Plaintiffs have deponed that they have stayed on the suit property measuring 2.35 acres for over (15) years; that the registered owners of the suit property have never stayed on the land and that they are entitled to the 2/3 undivided shares of Shar Singh Varma and Shemit Sing Varma.
3. The Respondents were served with the Originating Summons on 13th August, 2012 by way of advertisement in the Standard Newspaper.
4. It is only the 3rd Respondent who entered appearance and filed a Replying Affidavit on 25th November 2013. A consent was then entered into between the Applicants' advocate and the 3rd Respondents' advocate.
5. The 2nd and 4th Applicants appeared before me on 20th May 2005 and reiterated the contents of their affidavits.
6. In the absence of any response from the 1st and 2nd Respondents, I find and hold that the Applicants have proved their case on a balance of probabilities. Their evidence that they have lived on the suit property for over 15 years continuously, uninterruptedly, peacefully and exclusively has not been controverted by the registered proprietors of the 2/3 shares in parcel of land number 208/III/MN, that is the 1st and 2nd Respondent.
7. For those reasons, I allow the Amended Originating Summons dated 3rd July 2013 in the following terms.

(a) The four Applicants be and are hereby declared as the proprietors of two third (2/3) share of plot number 208/III/MN, Kanamai, Kilifi County.

(b) The Chief Land Registrar to issue to the Applicants a Certificate of Title as tenants in common for the two thirds (2/3) share of plot number 208/III/MN

(c) Each party to bear his own costs.

Dated and delivered in Malindi this 3rd day of July, 2015.

O. A. Angote

Judge