



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
MISC APP. NO. 29 OF 2012

IN THE MATTER OF: LIMITATION OF ACTIONS ACT (CAP 22 LAWS OF KENYA)

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE CIVIL PROCEDURE ACT

AND

590(2) IN THE MATTER OF: LAND PARCEL NO.782 (ORIGINAL NO.

BETWEEN

PETER G. H. KOENECKE.....APPLICANT

=VERSUS=

HEDWING ANNA HUG.....RESPONDENT

J U D G E M E N T

1. The Originating Summons dated 30th July 2012 is seeking for the following orders:

(a) THAT the freehold interest in land parcel No. 782 Malindi held by the respondent be and is hereby extinguished and the same be vested on the applicant.

(b) THAT the Applicant is entitled by adverse possession to all that land known as Parcel No. 782 Malindi (original Number 920(2) and the Honorable Court hereby do issue an appropriate order vesting the property to the applicant and that the applicant be registered as the proprietor to all of the freehold interest therein.

2. The Motion is premised on the ground that the Applicant took possession of the suit property

- pursuant to an agreement for sale entered into between the himself and Fred Karl Kiswetter as purchasers and Sadiq Ghalia (deceased) as the vendor in 1982; that the Applicant has been in exclusive, continuous and uninterrupted occupation of the land since 1982 and that the Applicant has acquired rights over the land as an adverse possessor.
3. Although the Motion was served upon the Respondent in the Daily Nation and the Standard Newspaper of 10th June, 2014 pursuant to the order of this court, the Respondent never entered appearance.
 4. When the matter came up for directions on 9th June 2015, the court directed the matter to proceed by way of affidavit evidence and submissions.
 5. In his submissions, the Applicant's advocate submitted that the Applicant has been in possession and occupation of the suit land without interruption from the Respondent after entering into a sale agreement with him since 1983; that the Applicant paid for the subject land but the transaction became void and that all attempts have been made to trace the Defendant without any success.
 6. The evidence before this court shows that on 23rd November 1972, the Respondent was registered as the proprietor of land known as portion number 782 (original number 590/2) Malindi. An official search annexed on the Applicant's Supporting Affidavit shows that the suit property Affidavit shows that the suit property was still registered in favour of the Respondent as at 11th June 2012.
 7. On 24th April 1982, an agreement between the Applicant and Fred Karl, as purchasers, was entered into with Sadiq Ghalia as the vendor. It is the Applicant's deposition that he took possession of the suit property upon execution of the Agreement for sale.
 8. It is the Applicant's case that after purchasing the suit property, he submitted building plans to the Municipal Council of Malindi in 1983 and constructed thereon shops, offices, a bar and restaurant; that he has been staying on the suit property since 1982 to date and that he has also rented the shops that he erected on the land.
 9. The Applicant has presented to this court the building plans that he submitted to the Municipal Council of Malindi.
 10. There is also evidence before the court showing that it is the Applicant who has been paying rates to the council since 1983.
 11. The Applicant has annexed on his Supporting Affidavit the Affidavit of Yolanda MC Intyre and Godfrey Karume who have deponed that they rented shops on the suit property from the Applicant from 1st January, 1984 to 1985.
 12. The totality of the evidence before me shows that indeed the Applicant has been in possession and occupation of the suit property since 1983 continuously and without any interruption.
 13. Section 7 of the Limitation of Actions Act provides that an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him. Consequently, the Respondent's right to evict the Applicant from the suit property or to recover the same is time barred.
 14. Section 38 of the same Act provides that where a person claims to have become entitled by adverse possession to land, he may apply to the High Court for an order that he be registered as the proprietor of the land. That is precisely what the Applicant has done.
 15. Having been satisfied that the Applicant has been in occupation and possession of the suit property for more than 12 years continuously and peacefully, and in the absence of evidence to the contrary, I allow the Applicant's Originating Summons dated 30th July 2012 as prayed.

Dated and delivered in Malindi this 30th day of **October** 2015.

O. A. Angote

Judge