



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 37 B OF 2012

RODGERS MWAMBONJE.....PLAINTIF

VERSES

DOUGLAS MWAMBONJE.....DEFENDANT

J U D G M E N T

Introduction:

1. The parties in this matter are brothers. In the Plaint dated 16th October, 2012, the Plaintiff has alleged that he is the registered owner of land known as Kilifi/Mbaraka Chembe/162 (the suit property); that prior to the allocation, the land was government land and that he was allocated the land by the Government in the year 1976.
2. The Plaintiff has averred that the Defendant, without any colour of right or permission has invaded and trespassed on the suit property having sold his land.
3. The Plaintiff is praying for an order of eviction and a perpetual injunction against the Defendant.
4. The Defendant filed a Defence and Counterclaim. In the Defence, the Defendant has averred that the registration of the suit property in favour of the Plaintiff was unlawful, null and void the same having been obtained by means of fraud, misrepresentation and or mistake.
5. According to the Defence, the Plaintiff had the suit property registered in his name exclusively while knowing that the suit land belongs to Mwambonje Kadosho Mrima, their late father, without involving him and the entire family.
6. The Defendant has further averred that he has been using the suit property in his capacity as one of the sons of the late Mwambonje Kadosho Mrima, the rightful owner of the land and that his father, mother, stepmother, brothers and sisters have been buried on the suit land.
7. In the counterclaim, the Defendant has stated that he has occupied and cultivated the suit land openly, exclusively and continuously without interruption for over 12 years from the time the Plaintiff was registered as the proprietor of the suit land.
8. The Defendant is praying for a declaration that the Plaintiff holds the title deed in respect of the suit property in trust for the family of Mwambonje Kadosho Mrima and in the alternative for a declaration that he has acquired adverse possession of the suit property.

Plaintiff's case:

9. The Plaintiff, PW1, informed the court that the Defendant is his brother. It was the evidence of PW1 that in 1968 while at home, he received a letter from the Gede land adjudication and settlement office informing him that the Government had decided to allocate him land. After one year, he received a card indicating the parcel number of the land that the Government had

- allocated him which was parcel number 162.
10. It was the evidence of PW1 that he was then issued with a title deed, amongst other people, in 1976 for Mbaraka Chembe/162 (the suit property). It was his evidence that it was only after he obtained the title deed that the Chief showed him where the parcel of land was, which was the same parcel of land that his father had constructed his house on.
 11. It was the evidence of PW1 that the suit property that he was allocated is the same land that his father was occupying as a squatter and that his father had other parcels of land abutting the suit property.
 12. PW1 informed the court that the parcel of land that was occupied by his father was subdivided into various portions which created plot numbers 64,200, 202, 222 and 225 and those portions were allocated to other people. However, his father continued to live on portion number 162.
 13. It was the evidence of PW1 that his father was never allocated land in the area by the government and that all his brothers were allocated their parcels of land by the government. The Defendant was allocated parcel number 237 in Jimba Settlement Scheme and another parcel of land in Jacaranda.
 14. It was the evidence of PW1 that when he was allocated the land, his father and mother were alive and they never objected to the said title deed being issued to him.
 15. PW1 informed the court that not all the family members were staying on the suit property and that the Defendant was staying in Chonyi; that the Defendant sold his parcels of land and that he has been occupying his land since the year 2003 when he had nowhere to go.
 16. PW1 stated that while staying on his land, the Defendant caused problems and he evicted him from the land and only went back to the land after three years. As a brother, he allowed him to stay on the suit property. However, it was the evidence of PW1 that the Defendant has been threatening him and that he had to report the dispute to the DO. The Plaintiff produced the title deed for the suit property as PEXB1.
 17. In cross-examination, PW1 stated that he could not tell the number of wives that his father had neither could he tell the number of his siblings. However, the Plaintiff was aware of seven brothers and three sisters whose names he gave.
 18. It was his evidence that his father occupied a big chunk of land which was subdivided by the government and redistributed to people and that his father was not given any land by the government during the adjudication process.
 19. PW1 informed the court that the Defendant is engaged in witchcraft and that the entire family does not like him; that 27 brothers and sisters have died and that they have been buried on parcels of land 64, 200, 202, 222 and 225 amongst others.
 20. PW2 informed the court that he was 72 years old and that he hails from the same locality as the Plaintiff.
 21. It was the evidence of PW2 that the Defendant was allocated land by the government which he sold to a Mr. Kabwere Benjamin.
 22. It was the evidence of PW2 that the land in question belongs to the Plaintiff and that he was also allocated land within the same locality by the government.
 23. According to PW2, the land was converted into a settlement scheme. Before then, everybody was staying on the land as a squatter and that during adjudication, everybody was allocated land.
 24. PW2 informed the court that after allocation, you could be taken to any area and that people who were over 80 years were not being allocated land in the scheme. That is the reason why the Plaintiff's father was never allocated land in the area and that he had a lot of land although without documentation.
 25. In cross-examination, PW2 stated that the Plaintiff's father came from an area called Bate and started living on the suit property.
 26. After the adjudication process, PW2 stated that the Plaintiff's father continued to live on the land allocated to the Plaintiff and that the rest of the Plaintiff's siblings, including the Defendant, were given their parcels of land by the government.
 27. It was the evidence of PW2 that the Defendant sold the land that he was allocated and that he has been staying on the suit property. He could however not recall when the Defendant started living on the said land.
 28. PW3 informed the court that he was born 72 years old and that the Plaintiff and the Defendants are his brother-in-laws.

29. It was the evidence of PW3 that during the adjudication process in the area, everybody was categorised as a squatter and was allocated land by the government.
30. It was the evidence of PW3 that he has known the Plaintiff's family for over 40 years and that the Defendant was also allocated his land. It was the evidence of PW3 that the suit property was allocated to the Plaintiff.
31. In cross-examination, PW3 stated that he was a technical officer in the Ministry of Agriculture in Gede during the adjudication process in the area.
32. It was the evidence of PW3 that the land in question was government land and not trust land; that the Plaintiff's father was staying on the suit property and that people applied to be allocated land in the area during the adjudication process.
33. By the time the Plaintiff's father died in 1976, it was the evidence of PW3 that it is the Plaintiff's father and mother who were staying on the suit property.
34. PW3 informed the court that he was registered the proprietor of parcel of land number 229 although it is his father who was staying on that land.
35. The Plaintiff's cousin, PW4 stated that the suit property belonged to the Plaintiff.
36. PW4 stated that after the adjudication process, he used to stay with the Defendant in Chonyi; that the Plaintiff and the Defendant's father hailed from Chonyi.
37. PW5 is also a cousin of the Plaintiff and the Defendant and lives in Bate. It was the evidence of PW5 that the Plaintiff was allocated the suit property by the Government.
38. It was his evidence in cross-examination that the Defendant sold the land that was allocated to him

The Defendant's case:

39. The Defendant, DW1, informed the court that he stays on plot no. 162 in Mbaraka Chembe sub-location. It was his evidence that the Plaintiff is his brother and that their father died in 1975.
40. According to the Defendant, the suit property belongs to their late father having been allocated the land in 1939 although it was never registered in his name.
41. DW1 informed the court that his late father had eight (8) wives and that he had two parcels of land each measuring 12 acres.
42. According to DW1, their original house is in Kizingo and that his parents moved to the suit property and put up structures. They planted cashew nuts, mango trees and coconut trees.
43. It was the evidence of DW1 that during the adjudication process in the area, his father was already dead and that he only learnt later that the land was registered in the Plaintiff's name when he checked with the lands office.
44. According to DW1, the suit property should have been registered in the name of their eldest brother, Mkutano Mwambonje; that the suit property was fraudulently registered in the name of the Plaintiff and that he is holding the title deed in trust for the entire family.
45. DW1 told the court that all his brothers have taken off from the suit property and that it is only him and his other brother Katana Mwambonje who are still on the land and that he has built a house on the land.
46. DW1 stated that his father and mother have been buried on the land and that he was never allocated land by the Government.
47. In cross-examination, DW1 stated that he has six children with the eldest being 32 years.
48. According to DW1, he moved on the suit property with his father when he was a young boy and that although people were given title documents when the area was declared a settlement scheme, his father was not given a title deed.
49. DW1 stated that he has eight brothers who are alive and that he has been staying on the land since 1939.
50. The former Chief, DW2, stated that he has known the Mwambonje's family since 1959.
51. According to DW2, the suit property should have been registered in the names of the wives of the late Mwambonje Kadosho Mrima after his death and not in the Plaintiff's name.
52. DW3 informed the court that he was born in 1930 and that he started staying in Gede in 1939.
53. It was the evidence of DW3 that the Plaintiff's and the Defendant's father, the late Mwambonje Kadosho Mrima was brought the disputed land by DW3's father and that the Plaintiff's father is the one who was allocated the land but he was not issued with the title deed immediately.

The Plaintiff's submissions:

54. The Plaintiff's advocate submitted that the land in question was initially government land occupied by squatters; that the Plaintiff was identified as one of the squatters and was allocated the suit property; that all the Plaintiff's siblings got other parcels of land during the adjudication process and that the Defendant was allocated parcels of land number 287 at Gede Settlement Scheme which he later sold to Benjamin Kabwere.
55. The Plaintiff's advocate relied on the provisions of the Lands Adjudication Act and submitted at length on the applicable procedure during the adjudication process of the land.
56. Counsel submitted that the provisions of the Land Adjudication Act provides for the steps that one follows to be registered as a bona fide owner of land and that the Defendant should have raised his objections pursuant to that Act.
57. The Plaintiff's counsel submitted that although the Defendant is claiming the suit property on behalf of the family, he did not call any family member to testify and his counterclaim should fail.
58. Counsel submitted that the Plaintiff obtained his title in the late 1970's and that the Defendant was invited to stay on the land in 2009. Consequently, it was submitted, a claim for adverse possession does not arise.
59. The Defendant's counsel submitted that no evidence was led by the Plaintiff to show that the area in dispute was initially government land and not trust land; that none of the Plaintiff's witnesses knew how the Plaintiff was registered as the owner of the suit property and that no evidence was produced to show that the Plaintiff was allocated land by the Government.
60. Counsel relied on the provisions of sections 28 and 126 of the Registered Land Act and submitted that the Act contemplated the holding of land in trust.
61. The Defendant's counsel submitted that in any event, the Defendant has resided on the suit property before and even after it was registered in the Plaintiff's name on a permanent basis. Counsel submitted that the Defendant's occupation has been continuous and inconsistent with the Plaintiff's ownership and title to it.
62. Counsel submitted that the Plaintiff did not tell the court when he gave to the Defendant the permission to occupy the suit property considering that the Plaintiff is a younger brother of the Defendant. Consequently, it was submitted, the Plaintiff has failed to prove that he gave any licence to the Defendant to occupy the suit property.

Analysis and findings:

63. The issues for determination in this suit are as follows:
 - (a) Whether the Plaintiff is entitled to the suit property.
 - (b) Whether the Plaintiff is holding the suit property in trust for the family of Mwambonje Kadosho Mrima
 - (c) Whether the Defendant has acquired the suit property by virtue of the doctrine of adverse possession.
64. The evidence by both the Plaintiff's and Defendant's witnesses is that the Plaintiff's father occupied the suit property since 1939. According to the evidence of PW1, PW2, PW3 and PW4, the late Mr. Mwambonje, just like everybody else in the area, was a squatter on a big chunk of land.
65. However, the government declared the area a settlement scheme and re-distributed the land that Mr. Mwambonje, the Plaintiff's and the Defendant's father, was occupying. The suit property being parcel number Kilifi/Mbaraka Chembe/162 was one of the sub-divisions that was created from the land that the late Mwambonje was squatting on. The land measures 7.2 Ha.
66. The title deed produced as PEXB1 shows that parcel number Kilifi/Mbaraka Chembe/162 was registered in favour of the Plaintiff on 19th July 1976. However, it was not until 5th July 1990 that a title deed was issued to the Plaintiff.
67. The evidence by the Plaintiff, PW1, is that he was informed by the area Land Adjudication and

- Settlement Officer in 1968 that he had been allocated a piece of land within the area after the government started the process of adjudication/demarcation. He did not know the land that he had been allocated or the acreage until in 1975 when he discovered that he had been allocated the same portion of land that his father and mother were living on.
68. It was the evidence of PW1 that his brothers, including the Defendant, were also allocated their parcels of land. However, his father was not allocated any land.
 69. The evidence of PW2 was that the Plaintiff's father was not allocated any land because he was over 80 years and such old people were not allocated land. It was the evidence of PW2 that the Defendant was allocated his portion of land which he sold.
 70. It was the evidence of PW2 that even after the allocation of the suit property to the Plaintiff, the Plaintiff's father continued living on the suit property.
 71. PW3 informed the court that everybody who was living in the area was confirmed as a squatter and was allocated land in the area by the government. It was his evidence that he was a brother in law of the disputants and that he has known the family for over 40 years.
 72. According to PW3, the Defendant was allocated his land which he sold.
 73. According to PW3, he was a technical officer in the Ministry of Agriculture when the government declared the area a settlement scheme and that people applied for and were given land during the adjudication process.
 74. The evidence of PW4, who is a cousin of the disputant's, reinstated the evidence of PW2 and PW3.
 75. All the Plaintiff's witnesses who are over 70 years old were allocated land by the government in the area under dispute. It was the evidence of all the witnesses that they were all squatters before the area was converted into a settlement scheme and the place was allocated to the squatters.
 76. Indeed, the Defendant confirmed in his evidence that he moved to Mbaraka Chembe with his father from Bate in 1939. By that time, he was a young boy.
 77. The evidence by PW1, PW2, PW3 and PW4 and DW1 clearly shows that the area known as Mbaraka Chembe cannot be considered the ancestral land of the Plaintiff and the Defendant. The land in question, as confirmed by PW3, the then technical officer in the Ministry of Agriculture, was government land which was declared a settlement scheme and not Trust land as defined by the Trust Land Act and the repealed Constitution.
 78. In any event, the suit property falls within the 10 mile coastal strip which before independence was a protectorate and which constituted freehold and crown (government) land at independence.
 79. The Kenya Protectorate strip before independence, otherwise known as the 10 mile coastal strip, is a strip of land between the sea and an imaginary line ten miles inland from the high water mark.
 80. The British Government, by virtue of the 1895 Agreement with the Sultan of Zanzibar, administered the coastal strip and it included parts of Lamu, Tana River, Malindi, Kilifi, Mombasa and Kwale counties. The British administration controlled only the crown (government) land but without prejudice to the sovereignty of the Sultan over the strip. For convenience, the coastal strip was administered by British with the rest of the colony as an administrative unit.
 81. The coastal strip, being under the sovereignty of the Sultan as per the 1895 agreement was never vested in the Native Trust Board pursuant to the Kenya Native Order in Council of 1938. The Trust Land Act, which came into force in 1939 to make provision for Trust land, was not applicable to the coastal strip.
 82. The law applicable to Trust land, which, as I have stated above, does not include the suit property, is the existing African customary law (see Section 69 of the Trust Land Act) as the substantive law.
 83. At independence, the Registered Land Act was legislated based on the Native Registration Land Ordinance. The sole purpose of the Act at the time was to deal with the ascertainment of rights of land held by natives under the Trust Land Act and any area to which the Minister may, by order, apply or land set apart under section 117 or section 118 of the repealed Constitution. (See section 2 of the RLA).
 84. Before Independence, the government land in the coastal strip, as documented in sessional paper number 9 of 1961 was occupied by Africans, otherwise known as squatters. The land however remained government land at independence and the government started giving to the occupants (squatters) title deeds after declaring such areas as settlement schemes.

85. The suit property, being government land in the former ten mile coastal strip was set aside as a settlement scheme and the claims of the squatters were ascertained and registered pursuant to the provisions of Section 2 of the Registered Land Act. That process is ongoing until now.
86. The law applicable in the ascertainment of land rights, where the land in question is government land, as in this case, is not the Land Adjudication Act as submitted by the Plaintiff's advocate.
87. The Land Adjudication Act is only applicable to the ascertainment and recording of rights and interests in Trust land, otherwise known as customary or ancestral land. The land in question, as I have already stated is not Trust land.
88. The Plaintiff's and the Defendant's father, having been one of the squatters over government land, with huge chunks of land and many wives and children seems not to have been considered when the interests of the squatters were being considered by the government after independence for purposes of issuance of titles.
89. It is not clear why the late Mr. Mwambonje was never considered as a squatter during the demarcation and identification of the squatters in the area in question. According to the evidence of PW2, the late Mr. Mwambonje was over 80 years during the ascertainment of the interests of the squatters. It was his evidence that people who were over 80 years were not allocated land in the scheme although Mr. Mwambonje's many children were all allocated land. It so happened, according to the evidence of PW1, PW2 and PW3, that the portion of land which the Plaintiff was allocated is part of the land that the late Mwambonje and some of his wives were living on.
90. I have noted that the Plaintiff was registered as the proprietor of the suit property in 1976. By this time, the late Mwambonje had already died. In my view, that is a plausible reason why he was not registered as the owner of the suit property and instead the suit property was allocated to one of his many sons, the Plaintiff, just the same way every adult member of the family must have been allocated land in the area and in other settlement schemes.
91. I say so because even though the late Mwambonje had vast land, the land being government land was taken from him and redistributed to various squatters. Having re-distributed the land in the area, I am convinced by the evidence of PW2 and PW3, who are over 70 years old, that all the male adults, including the Defendant who was a teacher, were allocated their portions of land in the scheme by the government.
92. The land that was redistributed by the government was not customary land and customary law did not apply. All the government did was to demarcate its land according to the government policy by then and redistribute it to individuals notwithstanding the acreage that one was claiming to have been his.
93. The concept of trust contemplated under sections 26 and 128 of the Repealed Registered Land Act foresaw a situation where customary or ancestral land may be registered in favour of a member of a family on behalf of other family members or even a whole community or clan.
94. If it is shown by way of evidence that indeed the land in question belonged to a community, or to the family and that an individual was registered as the proprietor of such land on behalf of the family members or community, then the court may declare that the registered proprietor holds such land on behalf of the disclosed members of the family or community as a trustee.
95. However, in this case, I have found that the land in question was not the ancestral land of Mr. Mwambonje. Indeed, Mr. Mwambonje was just one of the squatters with his children, not just on the suit property, which must have been surveyed after the area was declared a settlement scheme, but on a vast piece of land.
96. Consequently, it cannot be said that just because the Plaintiff was identified as the person entitled to a portion of land where Mr. Mwambonje was staying, the registration of that portion belongs to the entire family.
97. The evidence before me shows that it was a coincidence that the Plaintiff, being one of the many sons of Mr. Mwambonje, was the one who was allocated the suit property and registered as such by the government in 1976. By this time, the senior Mwambonje had already died.
98. I am also satisfied that the Defendant was also allocated land by the government which he sold. All the other brothers of the Defendants who were adults during the ascertainment of the rights of the squatters on government land were also allocated land.
99. Indeed, none of the Defendant's brothers, sisters, step brothers or step sisters have laid a claim over the suit property. In fact, none of them came to testify in this matter, confirming that the land in question is not family land as claimed by the Defendant.

100. The Defendant did not explain to the court where all his other brothers and step brothers went to, considering that his father had eight wives with many children, after the ascertainment of the rights of squatters in the area in 1976. In my view, the children of the senior Mwambonje were allocated land and they were satisfied.
101. There is therefore no evidence before me to show that the suit property was registered in the name of the Plaintiff in 1976 in trust for the family of the late Mwambonje Kadosho Mrima. That could not have happened considering that the land in question was government land and not trust land. The government ascertained each and every individual's claim during the process of planning, demarcation and identification of beneficiaries and verification of squatters. The circumstances of this case do not allow me to infer the concept of trust in respect to the suit property considering that the Defendant did not even tell the court the family members that he was representing.
102. The second issue that I am supposed to determine is whether the Defendant has acquired the suit property by virtue of the doctrine of adverse possession.
103. The evidence of PW1 and DW1 is at variance. According to PW 1, the Defendant only started living on the suit property in the year 2003 with his permission after he sold his land and had nowhere to go. However, he chased him from the land after he started causing problems just for him to forcefully go back on the land in the year 2009.
104. On the other hand, the Defendant claims that he has been on the suit property since 1939 when they moved there with his late father.
105. Under the law of Limitation of Actions Act, an action may not be brought by anyone to recover land after the end of the right of action accrues to him or, if it first accrued to some persons through whom he claims, to that person. The period of limitation to bring such an action is 12 years.
106. However, it is trite that one cannot acquire land by pleading the period of limitation if he has been on the land under a licence or permission from the owner.
107. The elements to prove for a claim of adverse possession are: the intruder resisting the suit or claiming the right by adverse possession must make physical entry and be in actual possession of the land for the statutory period; the entry must be with some claim or colour of right or title; the occupation of the land by the intruder must be non-permissive, the non-permissive actual possession must be unequivocally exclusive and with the clear intention of excluding the real owner (*animus possidendi*) and the acts of the owner must be inconsistent with the owner's enjoyment of the soil.
108. The burden of proving acquisition of title by adverse possession rests upon the person asserting it. It was therefore for the Defendant, not the Plaintiff, to prove on a balance of probabilities that he has acquired title to the suit property by way of adverse possession.
109. I have agonised over the issue as to whether a person staying on his brother's land for more than twelve (12) years can claim the land under the doctrine of adverse possession.
110. My research led me to one of the longest and well researched judgment of Kuloba J, as he was then, in the case of **Mbui Vs Maranya (1993) KLR 726**. In that case, the Judge stated as follows:

“Now, in this country, go to the country side, where our largest population resides, and see for yourself how people are so caring and mindful of one another's welfare. In the countryside, a lot of people are living on other people's land,, thanks to the African milk of generosity and kindness Our way of living has always been to depend on one another for mutual survival and progress. This is at every level.

To us, if you want any help, if you want a cow, if you want a piece of land for as long as the owner does not immediately require it, you are given this things, because the owner knows that it does not matter for how long you borrow this things; he can always recover whatever he has lent to you and whatever he has let you use. There are many people who, by a gentleman's agreement, all over the country, are actually living on the land of their friends, their clansmen, neighbours or even void land sale agreements. They do not ever think of claiming or losing title, by adverse possession..... I would be surprised if anyone pretended to be ignorant of these things. And ignorance on the part of a judge would be a calamity for the innocent.

The keeping on our land of landless relatives, clansmen...for long periods of time until they are able to buy their own land is a custom we all know.... The doctrine of adverse possession if not reasonably qualified and properly trimmed shall destroy the cherished ideals and sound cultural foundations, and destabilize the society.”

111. I entirely agree with the sentiments of the Judge in the above case. Indeed, if I was to feign ignorance of the African customs of people accommodating their kin on their land for long periods, I will be visiting calamity on the innocent.
112. Taking a cue from the sentiments of the court in the **Mbui** case (*supra*), which I am in agreement with, this court cannot overlook the fact that in the African cultural set up, a brother will more often than not allow his brother or sister to stay on his land whenever necessary.
113. In my view, where a relative, like a brother, a sister, a father, a mother, or even an uncle lives on one's land, unlike in a case of a stranger, there is a rebuttable presumption that consent has given consent. The burden of proving that the consent or permission was not given will be on the person claiming the relative's land by virtue of the doctrine of adverse possession.
114. The Defendant did not convince me that he has been staying on the land for more than 12 years without the consent of his brother, the Plaintiff. The Defendant did not call any relative of his a neighbour to dispute the fact that it is the Plaintiff who allowed him on the suit property after he sold his land.
115. The Defendant in this matter acknowledged the fact that although the Plaintiff does not live on the suit property, he has a house on the suit property, although he does not stay in it. The issue of dispossessing the Plaintiff of his land was not therefore proved by the Defendant.
116. The Defendant has also not proved that he has been using the suit property in a way that prejudicially affects the Plaintiff's practical interests. As was held by the court in the **Mbui** case (*supra*), the interests of justice are not served by encouraging litigation to restrain harmless activities merely to preserve legal rights, the enjoyment of which is, for good reason, being deferred. Being in possession *per se* is not enough to make the possession adverse.
117. Such possession must be accompanied by adverse possessory acts which are hostile to the rights of the owner in the land. Evidence of such acts like fencing off the occupied land or demolishing the Plaintiff's structure were not placed before the court.
118. The Defendant did not also prove that his possession was exclusive, and that nobody else was also in possession of the same land. The Plaintiff's structure and that of his other brother, Katana Mwambonje, are on the suit property. The presence of these structures clearly shows that the Defendant's occupation of the suit property was with the permission of the Plaintiff and was not exclusive and hostile.
119. In any event, the Defendant did not inform this court the acreage of the land that he is entitled to by virtue of the doctrine of adverse possession. There was no evidence on the acreage of the land that the Defendant has been using for the statutory period considering that his other brother, Katana, and the Plaintiff are also in occupation of the land. The Defendant cannot claim to have been utilizing the whole land in the circumstances of this case to the exclusion of the Plaintiff and Katana.
120. Consequently, I find and hold that the Defendant has not proved that he is entitled to the suit property by virtue of having occupied it exclusively and uninterrupted for a period of over 12 years.
121. On the hand, I find and hold that the Plaintiff is entitled to the suit property having been registered as the proprietor of the same in 1976.
122. For those reasons, I allow the Plaintiff's Plaint dated 16th October 2012 as prayed and dismiss the Defendant's counterclaim dated 23rd November 2012 with costs.

Dated and delivered in Malindi this **31st** day of **October**, 2014.

O. A. Angote

Judge