



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC NO. 235 OF 2015 (OS)

IN THE MATTER OF: A CLAIM FOR ADVERSE POSSESSION

AND

IN THE MATTER OF: PLOT NO. 458/I/M.N [CR.16333]

=AND=

1. MR. JAMES NGOWA

2. MR. GEORGE OBUDHO

3. MARIAM SHARIFF *[suing on behalf of members*

***of 458 Welfare Group]*.....PLAINTIFFS**

=VERSUS=

VIALE PROPERTIES KENYA LIMITED.....DEFENDANT

J U D G M E N T

1. This suit was commenced by the Plaintiffs on behalf of "458" Welfare Group.
2. In the Originating Summons dated 15th September, 2015, the Plaintiffs are seeking for the determination of the following questions:-

- (a) **Is the Defendant the registered proprietor of Plot No. 458 Section I/MN, [CR.16333]"**
- (b) **Have the Plaintiffs been in possession since 2000 of the property known as Plot Nos. 458 Section I/M.N.[16333]"**
- (c) **If so, has the said possession been quiet, continuous and adverse to the title of the Defendant"**
- (d) **If so, should the Registrar of Titles, Coast Registration District be ordered to have the Plaintiffs [458 Welfare Group] be registered as the absolute proprietor of the property known as**

Plot No. 458 Section I [CR.16333] free from all other encumbrances"

(e) What orders as to costs"

(d) Are there any further or other reliefs the Court may deem just to grant"

3. The suit is premised on the Affidavit of James Ngowa who deponed that the Plaintiffs stay at Bombolulu on plot number 458 Section 1/MN and that they have resided on the said land since 2000 to date.
4. According to the Plaintiffs, their families have been in continuous and uninterrupted occupation of the suit land for the last 15 years.
5. Although the Defendant was served with the Originating Summons by way of advertisement in the Standard Newspaper of 26th October, 2015 it neither entered appearance nor filed a Replying affidavit.
6. Indeed, the Plaintiffs went out of their way to serve the Defendant with a hearing notice of 31st March, 2016 by way of advertisement in the Standard Newspaper of 16th March, 2016.
7. This matter proceeded for formal proof on 31st March, 2016 when the 1st Plaintiff testified.
8. PW1 informed the court that he built his house on plot number 458/1/MN in the year 2000; that when he moved on the land, it was empty and that the other Plaintiffs also followed him on the land.
9. It was the evidence of PW1 that the entire property is now fully occupied and that their stay on the land has been continuous, uninterrupted, peaceful and that no one has ever asked them to vacate the land.
10. PW1 informed the court that in the year 2012, they came together and registered a welfare group for the members who were occupying the suit property; that the group has a membership of 43 people and that the title deed of the property should be registered in the name of the group.
11. PW1 produced in evidence the Certificate of Postal Search in respect to the suit property measuring 7.25 acres.
12. According to the search, the Defendant is the registered proprietor of the suit property.
13. This suit was filed pursuant to the provisions of section 38 of the Limitation of Actions Act and Order 37 Rule 7 of the Civil Procedure Rules.
14. Section 38 of the Limitation of Actions Act allows a person to apply to the High court for an order that he be registered as the proprietor of land in place of the person then registered where the person claims to have become entitled to such land by adverse possession.
15. The uncontroverted evidence before me shows that the members of "458 Welfare Group" have been occupying the suit property continuously, exclusively and peacefully for a period exceeding 12 years. The Plaintiffs have proved on a balance of probabilities that they are entitled to the suit property.
16. In the circumstances, I allow the Originating Summons dated 15th September 2015 in the following terms:

(a) The Registrar of Titles, Coast Registration District be and is hereby directed to register "458 Welfare Group" or its officials as the absolute proprietors of plot number 458/1/MN (CR. NO. 16333) free from all other encumbrances.

(b) The Plaintiffs to being their own costs.

Dated and signed in Malindi this 12th day of April, 2016.

O. A. Angote

Judge

Dated, signed and delivered in Mombasa this **15th** day of **April**, 2016.

A. Omollo

Judge



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